

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

FIRST SECTION

CASE OF PAVLIDIS v. GREECE

(Application no. 5832/09)

JUDGMENT

STRASBOURG

10 May 2011

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



In the case of Pavlidis v. Greece,

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

Anatoly Kovler, *President,*
Christos Rozakis,
George Nicolaou, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 12 April 2011,

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

PROCEDURE

1. The case originated in an application (no. 5832/09) 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") by a Greek national, Mr Sergios Pavlidis ("the applicant"), on 21 January 2009.

2. The applicant was represented by Mr S. Topalis, a lawyer practising in Thessaloniki. The Greek Government ("the Government") were represented by their Agent's delegates, Ms K. Paraskevopoulou and Mr M. Apessos, Senior Advisers at the State Legal Council, and Ms Z. Chatzipavlou, Legal Assistant at the State Legal Council.

3. On 19 March 2010 the President of the First Section decided to communicate the complaint concerning the length of the proceedings to the Government. In accordance with Protocol No. 14, the application was allocated to a Committee of three Judges.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Rhodes. He is a doctor.

5. On 11 June 2000, C.R., a British national, after a fall while being drunk, was transported to the hospital of Rhodes, where he died several hours later.

6. On 5 January 2001 the Rhodes First Instance Prosecutor ordered a preliminary investigation against all doctors involved in the care of C.R. The applicant, who had examined the victim when he was admitted to the hospital, was prosecuted for manslaughter.

7. The hearing before the Criminal Court of Rhodes was held, after one adjournment, on the 24, 25 and 26 September 2003. The mother of the victim, assisted by an interpreter, participated as a civil claimant seeking EUR 30 for moral damages. She reiterated her status as a civil claimant throughout the proceedings.

8. On 26 September 2003 the court found the applicant guilty and sentenced him to three years of imprisonment convertible into a fine (judgment no. 3016/2003). The applicant lodged an appeal on the same day.

9. On 9 February 2005, the Dodecanese Court of Appeal acquitted the applicant (judgment no. 52/2005). This decision was certified on 17 January 2006.

10. On 15 February 2006 the Prosecutor at the Court of Cassation lodged an appeal on points of law. The hearing took place on 10 January 2007.

11. On 6 August 2007, the Court of Cassation quashed the appellate decision for lack of reasoning and remitted the case to a different division of the Court of Appeal (judgment no. 1648/2007). The hearing before the Dodecanese Court of Appeal took place on 5 and 6 February 2008.

12. On 6 February 2008 the Court of Appeal found the applicant guilty of manslaughter and sentenced him to a suspended prison sentence of fifteen months (judgment no. 53/2008). This decision was certified on 29 February 2008.

13. On 14 March 2008 the applicant lodged an appeal on points of law. In his pleadings he challenged the legality of the civil claimant status of the victim's mother and the appointment of his interpreter during the hearing of 5 February 2008, the reasoning of the appellate decision and the assessment of evidence. The hearing was held on 14 May 2008.

14. On 4 June 2008 the Court of Cassation dismissed the appeal as unfounded (judgment no. 1484/2008). This decision was finalised on 22 July 2008.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

15. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

16. The Government contested that argument.

17. The period to be taken into consideration began on 5 January 2001 when a preliminary investigation was ordered by the Prosecutor against the doctors involved in the care of the victim, and ended on 22 July 2008 when judgment no. 1484/2008 of the Court of Cassation was finalised. It thus lasted more than seven years and six months for three levels of jurisdiction.

A. Admissibility

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

B. Merits

19. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

20. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

21. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. The applicant complained under Article 6 of the Convention about the fairness of the domestic proceedings, the assessment of the evidence by the domestic courts and their alleged failure to examine all his arguments. He also claimed that the domestic courts' judgments were not well reasoned.

23. The Court recalls that, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts. In particular,

it is not the Court's function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, among many others, *García Ruiz v. Spain* [GC], no. 30544/96, §§ 28-29, ECHR 1999-I).

24. In this case, the complaints raised by the applicant regarding procedural unfairness are of a fourth instance nature. In particular, throughout the proceedings, the applicant was fully able to state his case and there is nothing in the case file to indicate that the taking and the assessment of the evidence was arbitrary or that the proceedings were otherwise unfair to raise an issue under Article 6. Moreover, the judgments of the domestic courts were sufficiently reasoned.

25. Accordingly, the applicant's complaints are manifestly ill-founded and must be rejected under Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

27. The applicant claimed that he had incurred certain expenses due to the protracted length of the proceedings. In this respect, he submitted that he had been unable to work for several days every year in order to participate in the proceedings, using up his ordinary leave. Further, he claimed that during all the period that the proceedings were pending, the case had attracted the attention of the local community and the press.

28. The Government contested these claims. They observed that no specific amount had been claimed by the applicant regarding pecuniary or non-pecuniary damage.

29. The Court considers that the applicant did not specify his claim for pecuniary or non-pecuniary damage. Accordingly, the Court considers that there is no call to award him any sum on that account.

B. Costs and expenses

30. The applicant also claimed 3,730.88 euros (EUR) for the costs and expenses incurred before the domestic courts. He did not submit a claim for those incurred before the Court.

31. The Government contested these claims.

32. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

33. Regarding the costs incurred before the domestic courts, the Court has already ruled that the length of a procedure could result in increased costs of the applicant before the domestic courts and should therefore be taken into account (see *Capuano v. Italy*, 25 June 1987, § 37, Series A no. 119). The Court notes, however, that the costs claimed in this case were not caused by the length of proceedings but were costs normally incurred in context of the proceedings.

34. Regard being had to the above-mentioned criteria, and taking into account that no claim was submitted for the costs and expenses incurred before the Court, it is considered reasonable to reject the applicant's claim under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

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

3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Anatoly Kovler
President