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

THIRD SECTION

DECISION

Application no. 12766/15
Konstantinos DEMERTZIS
against Greece

The European Court of Human Rights (Third Section), sitting on 4 April 2023 as a Committee composed of:

Yonko Grozev*, President*,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 12766/15) 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 27 February 2015 by a Greek national, Mr Konstantinos Demertzis ("the applicant"), who was born in 1954 and lives in Heraklion;

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

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's complaints under Article 10 regarding a disciplinary sanction which was imposed on him following his participation in a television programme.

2. On 6 March 2006 the applicant appeared on a television programme as the representative of a client in a case which was pending before the civil courts concerning custody of the client's daughter, who had also accused her stepfather of sexual assault. The father of the child had allegedly abducted

her. The programme also featured the child's mother, stepfather and a psychiatrist, and included a video recording of the child.

3. On 6 April 2006 the Disciplinary Council of the Athens Bar, by decision no. 273/2006, held that the applicant had committed a disciplinary offence against professional ethics by appearing on and actively participating in the night-time television programme "Quests" (*Αναζητήσεις*). His conduct had been contrary to a range of provisions of the Lawyers' Code (Law no. 3026/1954, as applicable at the material time), which provided that lawyers had to exercise their duties with dignity and respect for the judicial authorities (see, for instance, Article 45 § 1), that they had to obey the decisions of the Bar and its board (Article 60), and that any infringement of the obligations laid down in that Code, in the internal regulations of the relevant Bar Association, or in the decisions of its board, would result in disciplinary action (Article 64 § 1). Additionally, Article 10(α) of the Code of Conduct for Lawyers prohibited lawyers from attempting to attract clients with actions incompatible with the profession's dignity. Article 10(η), which was added following decisions taken by the Athens Bar and the Plenary of Greek Bar Associations on 26 March and 27 April 1996 respectively, prohibited lawyers from reproducing ongoing or pending trials (so-called "television trials" (*τηλεδίκες*)) in the media. The Disciplinary Council suspended the applicant from practising for two months.

4. On 19 June 2007 the Supreme Disciplinary Council of Lawyers (a State body), by decision no. 30/2007, allowed in part an appeal brought by the applicant and reduced the suspension to one month. It held that the programme had contained an account of the relevant facts and presented all aspects of the court case, while the opposing parties had exchanged various allegations with detailed references to the content of the minor's statements before the courts and had criticised court judgments and prosecutors' orders that had been made while attempting to discover her whereabouts. According to the Supreme Disciplinary Council, in essence, "a trial of the case was held" in which the applicant had actively participated with the clear intention of self-promotion, increasing his visibility and creating positive publicity in favour of his client. He had thus substantially contributed to broadcasting and "adjudicating" the case on television instead of in the courts, for the satisfaction of the viewers. However, it considered that the appropriate sanction should be a one-month suspension from practice.

5. The applicant requested the annulment of his suspension before the Supreme Administrative Court. On 17 July 2014 that court, by judgment no. 2577/2014, confirmed the decision of the Supreme Disciplinary Council.

6. The applicant complained under Article 10 of the Convention that his one-month suspension for a mere appearance on the broadcast had been unfair.

THE COURT'S ASSESSMENT

7. The general principles as regards the special status of lawyers and freedom of expression are summarised in *Amihalachioaie v. Moldova* (no. 60115/00, §§ 27-28, ECHR 2004-III) and *Morice v. France* ([GC], no. 29369/10, §§ 132-139, ECHR 2015, with further references), including a distinction to be drawn between the conduct of members of the Bar in the courtroom or elsewhere. The Court has also identified the need to strike the right balance between the various interests involved (see, among other authorities, *Schöpfer v. Switzerland,* 20 May 1998, § 33, *Reports of Judgments and Decisions* 1998-III).

8. Pseudo-trials have been addressed by the Court in its judgment in the case of *Worm v. Austria* (29 August 1997, § 54, *Reports* 1997-V), where it held that it could not be excluded that the public's becoming accustomed to the regular spectacle of pseudo-trials in the media might in the long run have nefarious consequences for the acceptance of the courts as the proper forum for the determination of a person's guilt or innocence on a criminal charge. It held that an interference on the ground of protecting the authority of the judiciary could be justified without requiring an actual result of influence on the particular proceedings to be proved.

9. The disciplinary sanction in the present case constituted an interference by a public authority with the applicant's right to freedom of expression as guaranteed by Article 10 § 1 of the Convention (see, *mutatis mutandis*, *Casado Coca v. Spain*, 24 February 1994, §§ 38-39, Series A no. 285-A).

10. As regards the phrase "prescribed by law", which appears in Article 10 § 2 of the Convention, the Court has always understood the term "law" in its "substantive" sense, not its "formal" one, to include both statutory law – encompassing also enactments of lower ranking statutes and regulatory measures taken by professional regulatory bodies – and judge-made "law" (see *Leyla Şahin v. Turkey* [GC], no 44774/98, § 88, ECHR 2005-XI).

11. In the present case, the Code of Conduct for Lawyers, following the decisions of the Athens Bar and the Plenary of Greek Bar Associations, prohibited lawyers from reproducing ongoing or pending trials in the media. Articles 60 and 64 § 1 of Law no. 3026/1954 (the Lawyers' Code) were statutory provisions which made explicit reference to the obligation of lawyers to obey those decisions and expressly provided that non-compliance with the obligations laid down in the internal regulations of the relevant Bar Association and the decisions of its board would result in disciplinary action (see paragraph 3 above). Article 76 § 1 laid down the relevant disciplinary sanctions (reprimand, fine, temporary suspension from eight days to six months and permanent suspension). The Court cannot accept the applicant's arguments as regards the quality of the applicable law – as a lawyer he could reasonably have been expected to be familiar with the dense range of provisions relating to lawyers' professional ethics (see, *Morice*, cited above,

§ 133, and, *mutatis mutandis*, *Delfi AS v. Estonia* [GC], 64569/09, § 122, ECHR 2015). Accordingly, there are no grounds to conclude that the provisions relied on by the domestic authorities were not accessible or that their effect was not foreseeable. The interference was thus prescribed by law.

12. Furthermore, the Court finds that the reasons adduced by the domestic courts (see paragraphs 2-4 above) were consonant with the legitimate aims of the protection of "the reputation or rights of others", namely the respect for the rights of a minor, of other litigants and of persons who had not yet stood trial to be presumed innocent. It also had the aim of maintaining of "the authority and impartiality of the judiciary" and ensuring the proper administration of justice by preventing any extraneous influence (see, among many other authorities, *Morice*, cited above §§ 128-31).

13. As regards the proportionality of the imposed sanction, the Court refers to the general principles summarised in *Morice* (cited above, §§ 124-27) and to the criteria of the applicant's status and the role played by his statements in the task of defending his client; the contribution to a debate of public interest; the nature of the impugned remarks; the specific circumstances of the case; and the nature of the sanction imposed.

14. It is apparent from the decision of the Supreme Disciplinary Council of Lawyers that it did take into account the applicant's remarks in the programme in question in their entirety. The content of his participation could indeed warrant the conclusion arrived at by the domestic courts as to his intervention's potential for influencing the outcome of the trial. It cannot be accepted that his intervention was indispensable for defending his client against the opposing parties (contrast *Alfantakis v. Greece*, no. 49330/07, § 33, 11 February 2010) and he had all the legal remedies to do so before the competent courts. Considering the nature of the discussion which took place, such as an exchange of various allegations and criticisms between the opposing parties, including about the search for the minor, it is difficult to see how a television programme could contribute to legal defence. As regards the argument that the case had already received media coverage, the Court observes that that coverage primarily concerned the subsequent admission of the minor for a certain period in a national child psychiatry clinic and not the matters discussed during the programme, which contained some very personal information that had not been divulged before concerning private individuals and not public figures (compare and contrast *Alfantakis*, cited above, § 33).

15. As regards the applicant's remarks in the programme, it appears from the file that he repeatedly invited the journalist and participants to abstain from naming the judges involved in the case and to show respect for the domestic judgments which were still subject to appeal, by not commenting on them. However, he did participate in a discussion which, as he acknowledged during the programme, became side-tracked. In particular, he commented on the custody case and on the obstacles he saw to the mother's

taking custody of the minor, and criticised, with reference to the child's best interests, the mother's behaviour during the litigation and her attempts to regain custody. These statements made outside the courtroom were not part of a debate of public interest. The applicant did not confine himself to relevant general legal questions of child custody between divorced parents but commented on private aspects of a sensitive case.

16. The Court concludes that the domestic decisions examined the applicant's case thoroughly, weighed up the various interests involved and had regard to the requirements of Article 10 § 2 of the Convention, and that the grounds on which the applicant's disciplinary sanction was based were "relevant" and "sufficient" to justify the interference complained of. The Court notes that it was not prohibited for lawyers to participate in media broadcasts presenting legal matters of general interest; and the measure imposed does not appear to have been imposed in vague terms but rather on account of the applicant's active participation in a programme purporting to be the proper forum for the determination of a case pending before the courts. The relevant authorities' reaction could not be considered disproportionate to the aim of the protection of "the reputation or rights of others", maintaining of "the authority and impartiality of the judiciary" and ensuring the proper administration of justice (see *mutatis mutandis Casado Coca*, cited above, § 56).

17. Lastly, it is true that the one-month suspension constitutes a more severe interference than a reprimand or a fine (see paragraph 11 above). However, having regard to the temporary nature of the suspension, which could have lasted anywhere between eight days to six months, the possibility of permanent suspension, and the fact that the domestic courts reduced the suspension which had initially been imposed from two months to one month (see paragraph 4 above), the Court accepts that the disciplinary sanction imposed on the applicant was not disproportionate to the legitimate aim pursued, namely the protection of the authority of the judiciary and the rights of others.

18. Taking into account all the above, and having regard to the fact that the Court's role is not to take the place of the national authorities but to review under Article 10 the decisions they have taken pursuant to their power of appreciation, it finds that the interference complained of was "proportionate to the legitimate aim pursued" and "necessary in a democratic society". Therefore, the application must be declared inadmissible as being manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 May 2023.

Olga Chernishova Deputy Registrar	Yonko Grozev President