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

FIRST SECTION

DECISION

Application no. 52657/14
Spyridon DIAMANTIDIS
against Greece

The European Court of Human Rights (First Section), sitting on 20 September 2022 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. 52657/14) 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 13 July 2014 by a Greek national, Mr Spyridon Diamantidis ("the applicant"), who was born in 1948 and lives in Piraeus, and was represented before the Court by Mr K. Chrysogonos, a lawyer practising in Thessaloniki;

the decision to give notice of the complaint concerning Article 6 § 2 of the Convention to the Greek Government ("the Government"), represented by their Agent's delegate, Ms S. Trekli, Senior Adviser at the State Legal Council, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns an allegation of a violation of the presumption of the applicant's innocence in respect of order (*βούλευμα*) no. 5437/2013 of the Indictment Division of the Athens Criminal Court of First Instance (*Συμβούλιο Πλημμελειοδικών*) in a criminal case against three tax officers who had been prosecuted for making a false attestation. It raises issues of Article 6 § 2 of the Convention.

2. The applicant is a doctor. On 23 December 1998 the three tax officers, following a tax audit, issued a report in which they found that the applicant had engaged in the production and marketing of homeopathic products without complying with the relevant provisions of the tax legislation. On that basis, orders for recovery of unpaid taxes and several tax fines were imposed on the applicant. Following the applicant's applications, the Administrative Court of First Instance confirmed the findings of the audit. The applicant appealed and the Administrative Court of Appeal delivered in 2011 preliminary decisions requesting the completion of evidence.

3. On 26 January 2011 the applicant lodged a criminal complaint against the three tax officers for making a false attestation with intent to cause him unlawful harm.

4. On 23 March 2011 the head of the Athens tax office and the applicant reached an extrajudicial settlement of his case and, in respect of the taxation of income from his commercial activities, the relevant taxes and fines were cancelled.

5. Following a preliminary investigation, the three tax officers were prosecuted and in November 2012 the investigating judge was requested to conduct the main investigation. The criminal case was then brought before the Indictment Division of the Athens Criminal Court of First Instance by the prosecutor by way of a written proposal dated 16 December 2013, referring to the findings of the audit report and suggesting that the accused tax officers should not be charged with the offence in question. The proposal also noted that the decision of the head of the tax office who signed the extrajudicial settlement and cancelled all applicant's taxes and fines lacked reasoning and the Ministry of Finance ordered in 2013 an official administrative inquiry into the case and the financial situation of the head of the tax office.

6. On 17 December 2013 the applicant, following an invitation by the court, became aware of the prosecutor's proposal. On 19 December 2013 he submitted a supplementary memorandum relying on the principle of the presumption of innocence and contending that the assumptions in the prosecutor's proposal were contrary to the 2011 extrajudicial settlement of the applicant's case, which had the force of a final acquittal.

7. On the same day the Indictment Division delivered order no. 5437/2013, which stated that "from all the evidence gathered during the main investigation, (...) the facts referred to in the prosecutor's proposal (...) arose" and that "in the light of those facts, there was insufficient evidence for a case against the accused tax officers to be brought to the court".

8. As regards the supplementary memorandum, the Indictment Division noted that the applicant had become aware of the prosecutor's proposal on 17 December 2013 and that the bringing of the case before the Indictment Division even before the expiry of the time-limit of ten days following notification of the civil party, as laid down in Article 308 of the Code of Criminal Procedure, was lawful because of the risk that prosecution of the

offence could become time-barred. It also observed that the applicant's supplementary memorandum had been filed after the deliberations and had thus not been taken into account.

9. On 10 January 2014 the applicant requested the prosecutor of the Court of Appeal to lodge an appeal against order no. 5437/2013. He relied on, *inter alia*, the principle of the presumption of innocence. The prosecutor rejected his request on 15 January 2014.

10. Before the Court, the applicant complained that the presumption of his innocence had been violated.

THE COURT'S ASSESSMENT

11. The applicant contended that order no. 5437/2013 was meant to have assessed the three tax officers' guilt in relation to the offence of making a false attestation with intent to cause unlawful harm. Contrary to Article 6 § 2 of the Convention, it had accepted instead, that the applicant had committed the offences of unlawful production of medicine and tax evasion, of which he had already been found innocent on account of the extrajudicial settlement of 23 March 2011, which had the force of a final court's judgment.

12. The Government objected that the applicant had not exhausted domestic remedies because he had not filed in due time the supplementary memorandum in which he had relied on the presumption of innocence. They asserted that the case had been urgent because the alleged offence had been committed on 23 December 1998 and its prosecution would become time-barred fifteen years after that date. The applicant had lodged his criminal complaint on 26 January 2011, twelve years after the tax report had been issued. That delay could not be attributed to the judicial authorities, which had had to complete the examination of a significantly complex case in less than three years. The applicant had become aware of the prosecutor's proposal on 17 December 2013 and had submitted the supplementary memorandum on 19 December 2013 – the day of the deliberations – by which time they could no longer be taken into account by the court.

13. Article 308 §§ 1-3 of the Code of Criminal Procedure, as in force at the material time, provided that the main criminal investigation was to be concluded by means of an order of the Indictment Division of the first-instance criminal court to which the prosecutor had submitted his or her proposal. In the event that the parties wished to be informed of the content of that proposal, the prosecutor was to notify the relevant party so that he or she would become aware of the proposal within twenty-four hours. For that purpose, a copy of the proposal was to be kept at the registry of the prosecutor's office. For a period of ten days from the notification of the party, the case file was not to be forwarded to the Indictment Division of the first-instance criminal court unless there was a risk that prosecution of the offence could become time-barred.

14. The Government argued that this short time-limit of twenty-four hours, within which the applicant could submit his comments on the prosecutor's proposal, had not affected the validity of the procedure, in view of the risk that prosecution of the offence could become time-barred. According to case-law submitted by the Government, in the event that the accused was not informed of the proposal, the criminal proceedings were to be declared void, as the accused had been deprived of his or her defence rights. In the event that the accused had been informed of the proposal and had been provided with the opportunity to submit observations within twenty-four hours, the case could be brought before the court even before the expiry of the ten-days time-limit. This was aimed at ensuring compliance with the principle of legal certainty and was not in breach of the principle of proportionality because of the risk that prosecution of the offence could become time-barred. That provision had been well known and accessible to the applicant, who had been represented by more than one lawyer.

15. The applicant disagreed, arguing that he had not been late in lodging his criminal complaint, as it had been lodged two and a half months after the false attestation made by the tax officers in the tax report of 4 November 2010 and within the fifteen years of the offence becoming time-barred.

16. He contended that he had become aware of the prosecutor's proposal on the afternoon of 17 December 2013, he had drafted the memorandum within the twenty-four hours and he had filed it at around 10.30 a.m. on 19 December. According to the applicant, on 19 December at 12.40 p.m. the secretary had informed his lawyer that the court had met and that his written explanations could not be taken into account. The fact that order no. 5437/2013 stated that "the applicant's supplementary memorandum was filed after the deliberations and were thus not taken into account" proved that the court had taken note of the fact that they had been filed during the deliberations and could have considered them.

17. According to the applicant, any delay had to be attributed to the authorities, as the prosecutor had not taken any action for eight months, from 2 April to 19 December 2013. Furthermore, the case had been simple and not particularly complex.

18. The general principles on the rule of exhaustion of domestic remedies have been summarised in *Selmouni v. France* ([GC], no. 25803/94, § 74, ECHR 1999-V). The complaints intended to be made subsequently at international level should have been made to the appropriate domestic body, at least in substance, and in compliance with the formal requirements and time-limits laid down in domestic law (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

19. The formal requirements in question, or their application, should not prevent litigants from using an available remedy (see *Miragall Escolano and Others v. Spain*, nos. 38366/97 and 9 others, § 36, ECHR 2000-I). The rules

governing the formal steps to be taken and the time-limits to be complied with in lodging a legal remedy are aimed at ensuring the proper administration of justice and compliance, in particular, with the principle of legal certainty. Litigants should expect those rules to be applied (see, *mutatis mutandis, Miragall Escolano and Others,* cited above*,* § 33).

20. The Court notes that Article 308 §§ 1-3 of the Code of Criminal Procedure explicitly provides for the possibility of bringing the case before the Indictment Division of the first-instance criminal court before the expiry of the ten-day time-limit if there was a risk that prosecution of the offence could become time-barred. In the present case, the applicant sought the prosecution and conviction of the tax officers for the allegedly false attestation set out in their tax report of 23 December 1998. It is true that his criminal complaint contained allegations of other false attestations set out in a subsequent tax report dated 4 November 2010. However, the Court cannot see how these subsequent submissions could have altered the fact that the original offence complained of was committed in 1998 and prosecution of that offence would have been time-barred, under the applicable limitation period at the material time, after fifteen years, that is, on 23 December 2013. The Court can therefore accept that there were grounds for the judicial authorities to rapidly bring the case before the court, as provided for under national law.

21. The applicant submitted his criminal complaint in January 2011. In the remaining approximately three years of the fifteen-year period, the national authorities did not remain inactive. After the applicant lodged his criminal complaint, they regularly took steps, conducting a preliminary investigation and the main investigation and gathering evidence (see paragraph 5 above); they therefore cannot be held accountable for not having examined the case expeditiously and thus causing a risk that prosecution of the offence would become time-barred (contrast *Gousis v. Greece*, no. 8863/03, § 35, 29 March 2007).

22. The Court has no reason to question that the rule in issue was aimed at protecting in principle the defence rights of the accused while ensuring compliance with the principle of legal certainty. The applicant was represented by a lawyer during the entire proceedings and he should have expected that the procedural rules concerning the referral of the case to the Indictment Division of the Criminal Court of First Instance would apply. Moreover, even accepting the applicant's version of the facts that he had submitted the memorandum at around 10.30 a.m. on 19 December 2013, the applicant did not make the submission in due time as the comments on the prosecutor's proposal should have been submitted by 18 December 2013 in order to have any relevant impact on the order of the Indictment Division of the Criminal Court of First Instance.

23. The Court thus considers that, in the light of all the material in its possession, the applicant has not, as required by Article 35 § 1 of the

Convention, exhausted the domestic remedies available to him, as he failed to comply with the applicable rules and procedures of domestic law. The application must therefore be rejected, pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 October 2022.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President