CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42152/98
by Allan ROSS
against Greece

The European Court of Human Rights (Second Section) sitting on 4 May 1999 as a Chamber composed of

Mr M. Fischbach, *President*,
Mr C. Rozakis,
Mr G. Bonello,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mr A.B. Baka,
Mr E. Levits, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 7 December 1997 by Allan ROSS against Greece and registered on 7 October 1998 under file no. 42152/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1919 and resident in Milton Keynes, England. He is represented before the Court by Helen Arabanos, a lawyer practising in London.

The facts of the case, as submitted by the applicant, may be summarised as follows.

A. Particular circumstances of the case

On 31 December 1990, the applicant's wife, Barbara Ross, was hit by a speeding car as she was crossing a road in Glyfada, Athens and died. An autopsy was carried out on her body at a hospital immediately after the accident. The police did not carry out any blood tests on the driver to ensure that he was not under the influence of alcohol or any other illegal substance.

Criminal proceedings were instituted against the driver before the Three-member First Instance Criminal Court (*trimeles plimmeliodikio*) of Athens. The applicant did not join the proceedings as civil party. On 13 May 1993 the court found the defendant guilty of reckless or negligent manslaughter and sentenced him to a term of seven months imprisonment or to the paying of a fine of 1,500 drachmas for every day of the sentence. The defendant duly served the sentence.

On 8 November 1994, the applicant together with his two sons and the victim's brother instituted civil proceedings against the driver for compensation before the Single-member First Instance Civil Court (*monomeles protodikio*) of Athens. The driver's insurance company represented the driver in court. On 18 September 1995 the court decided that the death of Barbara Ross was entirely due to her own fault since she was not careful enough when crossing the road. The court did not award any compensation.

The applicant together with his two sons and the victim's brother appealed on 22 January 1996. On 26 June 1997 the Court of Appeal (*efetio*) of Athens overturned the decision of the first instance court. The Court of Appeal decided that the victim was 70% responsible for her death and that the driver was 30% responsible. Compensation was awarded accordingly. The applicant received 950,000 drachmas, the two sons received 400,000 drachmas each and the victim's brother received 200,000 drachmas.

B. Relevant domestic law

Section 105 of the Law introducing the Civil Code lays down that:

> "The state shall be under a duty to make good any damage caused by the unlawful acts or omissions of its organs in the exercise of public authority, except where the unlawful act or omission is in breach of an existing provision but is intended to serve the public interest. The person responsible shall be jointly and severally liable, without prejudice to the special provisions on ministerial responsibility."

COMPLAINTS

1. The applicant complains that the respondent Government failed to fulfil its duty under Article 2 of the Convention to protect and safeguard life. He submits that the spot where his wife died was well known as a dangerous area for pedestrians. However, necessary measures to make the spot safer have not been taken by the authorities. Traffic lights, speed ramps, a pedestrian crossing would have helped to alleviate the situation. Moreover, the police did not examine the driver for any traces of drugs or alcohol in his blood. The authorities have not taken the necessary measures to control the abuse of drinking and driving and, therefore, to protect society from any harmful consequences that may ensue.

2. The applicant complains under Article 8 of the Convention that the failure of the respondent Government to take the necessary measures and precautions to protect the life of his wife also amounted to a violation of the applicant's right to respect for his private and family life.

3. The applicant also complains under Article 6 § 1 of the Convention that the time taken for the First Instance Civil Court and the Court of Appeal to come to a decision regarding compensation was unreasonable.

4. Finally, the applicant complains under Article 13 of the Convention that the police did not carry out a thorough examination of the case since they failed to carry out tests to examine whether there were any traces of alcohol or other illegal substances in the driver's blood.

THE LAW

1. The applicant complains under Articles 2 and 8 of the Convention of the failure of the authorities to take positive measures to protect his wife's life as well as his private and family life.

The Court recalls that Article 35 of the Convention provides that:

> "The Court may only deal with the matter after all domestic remedies have been exhausted according to generally recognised rules of international law".

The Court notes that the applicant could have introduced proceedings against the State for damages under section 105 of the Law introducing the Civil Code in respect of the failure of the police to investigate the case properly or the failure of the authorities to take general measures that could have made the road safer or reduced the abuse of alcohol by drivers. Since he has not shown that he has instituted such proceedings, it follows that the applicant has not exhausted domestic remedies in accordance with Article 35 § 1 of the Convention. This part of the application must, therefore, be rejected under Article 35 § 4 of the Convention.

2. The applicant complains of a violation of Article 6 § 1 of the Convention. He argues that the duration of the proceedings was unreasonably long.

The Court recalls that Article 6 § 1 provides that:

"In the determination of his civil rights and obligations …, everyone is entitled to a … hearing within a reasonable time …"

The Court notes that the applicant did not join the criminal proceedings instituted against the driver as a civil party. It follows that these proceedings did not involve a determination of the applicant's civil rights and obligations within the meaning of Article 6 § 1 of the Convention (Eur. Court HR, Hamer v. France judgment of 7 August 1996, Reports 1996-III). As a result, the duration of the criminal proceedings cannot be taken into consideration when assessing whether the applicant's right to a hearing within a reasonable time has been respected.

The Court further notes that the civil proceedings before the Single-member First Instance Civil Court of Athens were instituted by the applicant on 8 November 1994 and the case was decided on 18 September 1995. The applicant appealed against this decision on 22 January 1996. The final decision was delivered on 26 March 1997. Thus the total duration of the proceedings was two years, four months and 18 days.

The Court recalls that the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and with the help of the following criteria: the complexity of the case, the conduct of the parties and the conduct of the authorities dealing with the case (see Eur. Court H.R., Vernillo v. Italy judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

The Court considers that the proceedings were not particularly complex. As regards the behaviour of the parties, the Court notes that there was a four-month delay between the delivery of the first instance judgment and the lodging of the appeal by the applicant. Given that the case was examined by two levels of jurisdiction and that the applicant has not pointed out any particular period of inactivity, the Court considers that the overall duration of the proceedings does not disclose a violation of the reasonable time requirement under Article 6 § 1 of the Convention.

It follows that this part of the application is manifestly ill-founded and that it must be rejected in accordance with Article 35 § 3 of the Convention.

3. The applicant complains under Article 13 of the Convention of the police authorities' failure to conduct any blood tests which effectively precluded him from obtaining redress before the domestic courts in respect of the violation of his wife's right to life and moral and physical integrity under Articles 2 and 8 of the Convention and his right to respect for his private and family life under Article 8.

The Court recalls that Article 13 of the Convention provides that:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court has found above under p. 1 that the applicant has failed to institute proceedings for damages against the State alleging failure on behalf of the authorities. The Court considers that such proceedings could have included the allegation that the authorities has failed to conduct blood tests and, therefore, could have provided a remedy for the applicant's claim in respect of Article 13. Consequently, Greek law provided him with a remedy sufficient for the purposes of Article 13 of the Convention. The complaint is therefore manifestly ill-founded.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Marc Fischbach
President