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

FIRST SECTION

DECISION

Application no. 16393/14
Dimitris SIOUTIS
against Greece

The European Court of Human Rights (First Section), sitting on 29 August 2017 as a Chamber composed of:

Kristina Pardalos, *President,*
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Krzysztof Wojtyczek,
Armen Harutyunyan,
Tim Eicke,
Jovan Ilievski, *judges,*

and Abel Campos, *Section Registrar,*

Having regard to the above application lodged on 14 February 2014,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Dimitris Sioutis, is a Greek national who was born in 1958 and lives in Glyfada. On 27 August 2014 the President of the Section decided to grant leave to the applicant to present his own case under Rule 36 § 2 *in fine* of the Rules of Court.

2. The Greek Government ("the Government") were represented by their Agent's delegates, Ms K. Paraskevopoulou and Ms V. Stroumpouli, Legal Counsellor and Legal Representative respectively at the State Legal Council.

3. The applicant alleged that the refusal of the competent authorities to provide him with a copy of decision no. 1830/2013 of the multi-member

first-instance civil court of Athens on the grounds that he did not have a legitimate interest had violated his right of access to information of general interest.

4. On 3 June 2014 the complaint concerning access to information of general interest was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

A. The circumstances of the case

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

6. On 29 August 2013 the applicant read an article on a news website concerning the outcome of civil proceedings for slander initiated by Mr S., a Member of Parliament, against Mr V., a well-known businessman. The article included statements made by Mr. S. following the delivery of the judgment, no. 1830/2013, by the multi-member first-instance civil court of Athens (*Πολυμελές Πρωτοδικείο*), which ordered Mr V. to pay him 150,000 euros.

7. On 2 September 2013 the applicant submitted a request to the President of the three-member committee of the Athens Court of First-Instance to be provided with a copy of the above-mentioned decision, attaching a copy of the article he had read (request no. 8776/2-9-2013). Judge P.K. rejected the request on 3 September 2013, writing: "The request is dismissed owing to the lack of a legitimate interest (Article 22 § 2 of the Code for the Organisation of Courts)".

8. On 9 September 2013 the applicant repeated his request, referring to the Convention and the Court's judgment in *Szücs v. Austria* (no. 20602/92, 24 November 1997) (request no. 8938/9-9-2013). The applicant re-submitted his request to the domestic court on 16 October and 4 November 2013, citing what he regarded as pertinent judgments by the Court and the Court of Justice. However, he was not granted permission to obtain a copy of the decision.

B. Relevant domestic law

9. The relevant Article of the Greek Constitution reads as follows:

Article 99

"Actions against judicial officers for miscarriage of justice shall be tried, as specified by law, by a special court composed of the President of the Supreme Administrative Court, as President, and one councillor of the Supreme Administrative Court, one Supreme Civil and Criminal Court judge, one councillor of the Court of Auditors, two law professors of the law schools of the country's universities and two

lawyers from among the members of the Supreme Disciplinary Council for lawyers, as members, all of whom shall be chosen by lot.

In each case, the member of the special court who belongs to the judicial body or branch the actions or omissions of an officer of which the court is called upon to judge shall be exempted. In the case of an action against a member of the Supreme Administrative Court or an officer of the ordinary administrative courts, the special court shall be presided over by the President of the Supreme Civil and Criminal Court.

No permission shall be required to institute an action for miscarriage of justice."

10. By virtue of Article 22 § 2 of the Code for the Organisation of Courts, parties to proceedings can receive copies of or extracts from decisions or relevant documents of any set of proceedings, except criminal cases. Third parties can obtain a copy or extract only if they can prove that they have a legitimate interest, which is left to the discretion of the competent judge.

COMPLAINT

11. The applicant complained under Article 10 of the Convention that the competent authority's refusal to provide him with a copy of decision no. 1830/2013 of the multi-member first-instance civil court of Athens on the grounds that he did not have a legitimate interest had violated his right to receive information.

THE LAW

12. The applicant complained that the authorities had denied him access to information of general interest. He relied on Article 10 of the Convention, the relevant parts of which read:

"1. Everyone has the right to freedom of expression. This right shall include freedom ... to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The parties' submissions

1. The Government's submissions

13. Firstly, the Government argued that the applicant had not exhausted domestic remedies. In the Government's view, an application in respect of a miscarriage of justice (*αγωγή κακοδικίας*) against the judge who had denied the applicant access to the relevant document was an effective remedy, which should have been used in the present case. The Government pointed out that the applicant had lodged an application in respect of a miscarriage of justice by the competent judges with the Special Court; however, that application had been dismissed as inadmissible owing to the fact that the applicant had not been represented by a lawyer. On that basis, the Government requested that the application be dismissed on the grounds of non-exhaustion of domestic remedies. Alternatively, the Government submitted that the application should be dismissed as premature owing to the fact that it had been lodged before the end of the six-month time-limit for lodging an application in respect of a miscarriage of justice.

14. As regards the merits, the Government denied that there had been an interference with the applicant's rights under Article 10 of the Convention. In particular, they argued that the applicant had not had the right to receive a copy of decision no. 1830/2013. In the Government's view, the considerations by the Court in *Társaság a Szabadságjogokért v. Hungary* (no. 37374/05, § 27, 14 April 2009) did not apply to the present case as the applicant had not requested a copy of the decision in order to contribute to an informed public debate. The applicant was neither a journalist nor a member of civil society and could not be described as a social "watchdog". The applicant could not claim to be a victim at all as there was no specific link between the acts and omissions that had led to the alleged violation and the applicant.

15. The applicant had not had any right to receive a copy of the decision under domestic law. In particular, in accordance with Article 22 § 2 of the Code of the Organisation of Courts, only those with a legitimate interest could receive a copy of a decision taken by a civil court as such cases concerned private matters between individuals. For example, a legitimate interest could arise where a person who wished to lodge a third-party intervention or who would be bound by the *res judicata* of the decision wanted to have a copy of it. However, such a legitimate interest could not be equated with an interest in being informed on matters of general concern. In any event, the existence or not of a legitimate interest was left to the discretion of the competent judge. In the circumstances of the present case, the applicant's right to be informed had been satisfied by the article he had read on the news website and the possibility to consult the decision at the court.

16. The Government drew a parallel with the right to access to administrative documents, as provided for by domestic law and clarified by the Supreme Administrative Court. While the relevant provisions did not apply in the circumstances of the present case, which related to the specific legal framework for access to judicial decisions, the case-law of the Supreme Administrative Court still clearly indicated that a citizen's general interest in the administrative authorities' orderly exercise of their duties and their compliance with the law did not constitute a legitimate interest. Determining the existence of a legitimate interest required a specific, personal legal relationship, linked to the request or the content of the administrative data in the requested documents. In the Government's view, that case-law applied by analogy in the circumstances of the present case.

17. Additionally, the Government argued that even if there had been an interference with the applicant's right to receive information, it had not violated Article 10 of the Convention. It had been prescribed by law, in particular by article 22 § 2 of the Code of Organisation of Courts. Moreover, it had pursued the legitimate aims of protecting the reputation of third parties and personal data. In particular, even if the applicant had raised the question of a legitimate interest, it would have been weighed against the rights of the parties to the protection of their personal data under the provisions of domestic law no. 2472/1997, which forbids the collection and processing of sensitive personal data. In addition, the domestic provision pursued the legitimate aim of the smooth functioning of justice as domestic courts would face a great many obstacles if any citizen could ask for any decision without invoking a specific legitimate interest or, in some cases, without even specifying which decision was of interest to him or her.

18. In respect of the necessity of the interference, the Government argued that taking into account the applicant's role and, in particular, the fact that he was neither a journalist nor someone who wished to contribute to an informed public debate, the restriction imposed to him had been necessary in order to safeguard the above-mentioned interests. The Government submitted that under law no. 2470/1997 on the protection of personal data there were exceptions regarding the collection and processing of sensitive personal data, including when public figures were concerned or when such exceptions were necessary for the purposes of journalism. As the applicant had not fallen within the scope of one of those exceptions, the restriction imposed on him, namely that he had had to prove that he had a legitimate interest in receiving a copy of a decision issued in proceedings in which he had not been a party had been both legitimate and necessary in a democratic society.

2. The applicant

19. The applicant maintained that a claim of a miscarriage of justice was not an effective remedy as there was not a single example of such an action

having been accepted in the last thirty years. He had lodged an application in respect of that remedy but had had no hope that it would be successful. Even if his application had been accepted, it would still not have satisfied his right to be provided with a copy of the decision he had requested. The applicant also argued that his application had not been premature and that he could not reasonably be expected to have waited six months to lodge his application with the Court as then he would not have complied with the time-limit.

20. The applicant argued that the authorities should have given him a copy of the decision in question, without him having to prove that he had had a legitimate interest. In the applicant's view, giving a copy of a domestic decision to any citizen who made such a request served the legitimate aim of protecting the reputation of parties to proceedings, who would want it to be known that they had been acquitted in a criminal case or had won a civil case.

21. The applicant also referred to the general interest of the public in being informed of judicial decisions in order to know how domestic law was interpreted by the courts. Full access to decisions issued by the domestic courts would promote the general principles of transparency and accountability and would have a deterrent effect on those who wished to break the law. Additionally, public scrutiny of such decisions would further enhance the administration of justice owing to the fact that judges would be more careful if they knew that their decisions were open to the public. In the applicant's view, denying access to decisions undermined the very essence of democracy. The applicant further submitted that since judicial decisions were pronounced publicly, the opportunity for everyone to receive a copy should be guaranteed so as to enable fair and equal access to all citizens.

22. Relying on the Court's judgment in *Steel and Morris v. the United Kingdom* (no. 68416/01, § 89, ECHR 2005-II), the applicant argued that individuals could also contribute to the dissemination of ideas on matters of public interest, especially taking into account the power of social media. Users of social platforms were *de facto* shapers of public opinion and the protection afforded to journalists, or at least a similar level of protection, should be afforded to individuals as well.

23. Lastly, the applicant argued that the provision of the Code of the Organisation of Courts, which had been relied on to deny him the right to receive a copy of the decision, did not serve any legitimate aim. The names of the parties had already been published on a news website so there had been no need to protect their reputation or personal data. In addition, the provision did not respond to any pressing social need.

B. The Court's assessment

24. The Court notes at the outset that it will only deal with the applicant's complaint under Article 10 as his complaint under Article 6 § 1 of the Convention was dismissed at the communication stage. The Court has now to examine whether Article 10 applies in the circumstances of the present case. In that regard, the Court reiterates that Article 10 does not confer on the individual a right of access to information held by a public authority nor oblige the Government to impart such information to the individual. However, such a right or obligation may arise, firstly, where disclosure of the information has been imposed by a judicial order which has gained legal force and, secondly, in circumstances where access to the information is instrumental for the individual's exercise of his or her right to freedom of expression, in particular "the freedom to receive and impart information" and where its denial constitutes an interference with that right (see *Magyar Helsinki Bizottság*, cited above, § 156).

25. The Court notes at the outset that in the present case disclosure of the information was not imposed by a judicial order which had gained legal force. Therefore, in order to determine whether Article 10 is applicable, the Court will have to determine whether receiving a copy of the requested decision was instrumental for the applicant's exercise of his freedom to expression, in particular "the freedom to receive and impart information" and whether its denial constituted an interference with that right. In doing so the Court will be guided by the principles laid down in *Magyar Helsinki Bizottság* (cited above, §§ 149-180) and will assess the situation in the light of the particular circumstances having regard to the following criteria: (a) the purpose of the information request; (b) the nature of the information sought; (c) the role of the applicant and (d) whether the information was ready and available.

26. In respect of the first criterion, the Court reiterates that in order for Article 10 to come into play it must be a prerequisite that the purpose of the person in requesting access to the information held by a public authority is to enable his or her exercise of the freedom to "receive and impart information and ideas" to others. Thus, the Court has placed emphasis on whether the gathering of the information was a relevant preparatory step in journalistic activities or in other activities creating a forum for, or constituting an essential element of, public debate. It must be ascertained whether the information sought was in fact necessary for the exercise of freedom of expression (see *Roşiianu v. Romania*, no. 27329/06, § 63, 24 June 2014). For the Court, obtaining access to information would be considered necessary if withholding it would hinder or impair the individual's exercise of his or her right to freedom of expression (see *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, § 28, 14 April 2009), including the freedom "to receive and impart information and ideas",

in a manner consistent with such "duties and responsibilities" as may follow from paragraph 2 of Article 10 (see *Magyar Helsinki Bizottság*, cited above, §§ 158-159).

27. Turning to the circumstances of the present case, the Court notes that the applicant does not contest that the impugned decision was adopted following a public hearing, that it was publicly pronounced and that it was accessible to the public at the registry of the court. His request concerned merely the receipt of a copy of the decision in question and not the access to the text of the decision, which had not been refused to him. The applicant, who was not in any way personally concerned by the relevant litigation between Mr S., a Member of Parliament, and Mr.V., a well-known businessman, based his request on a general interest of being informed, arguing that all decisions should be available to the public and that that would promote the legitimate aims of transparency, accountability and the good administration of justice. However, the applicant did not invoke any specific reason why a copy of the decision was necessary to enable him to exercise his freedom to receive and impart information and ideas to others. In particular, he did not put forward any argument, either before the domestic authorities or the Court, as to why receiving a copy of the decision was instrumental for the exercise of his freedom of expression. In the absence of any such arguments, the Court fails to see why the applicant's freedom of expression, including the freedom "to receive and impart information and ideas", as protected under Article 10 of the Convention, was not satisfied by the possibility given to him to consult the text of the decision at the court itself.

28. In respect of the second criterion, namely the nature of the information sought, the Court reiterates that the information, data or documents to which access is sought must generally meet a public-interest test in order to prompt a need for disclosure under the Convention. Such a need may exist where, inter alia, disclosure provides transparency on the manner of conduct of public affairs and on matters of interest for society as a whole and thereby allows participation in public governance by the public at large. What might constitute a subject of public interest will depend on the circumstances of each case. The public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about. The public interest cannot be reduced to the public's thirst for information about the private life of others, protected under Article 8 of the Convention, or to an audience's wish for sensationalism or even voyeurism. In order to ascertain whether a publication relates to a

subject of general importance, it is necessary to assess the publication as a whole, having regard to the context in which it appears (see *Magyar Helsinki Bizottság*, cited above, §§ 161-162).

29. In this connection, the Court notes that the applicant wished to receive a copy of a decision issued in a dispute over "civil rights" within the meaning of Article 6 of the Convention. Pursuant to Article 6 § 1 of the Convention, domestic decisions should be pronounced publicly and should be, in some form, made accessible to the public in the interest of the good administration of justice and transparency (see, for a recapitulation of the relevant principles, *Fazliyski v. Bulgaria*, no. 40908/05, § 64-66, 16 April 2013). In particular, the public character of proceedings before the judicial bodies referred to in Article 6 § 1 of the Convention protects litigants against the administration of justice in secret with no public scrutiny. It is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see *Pretto and Others v. Italy*, 8 December 1983, § 21, Series A no. 71, *Axen v. Germany*, 8 December 1983, § 25, Series A no. 72, and *Fazliyski v. Bulgaria*, cited above, § 64). The Court notes, however, that the requirement that the information sought meet a public-interest test in order to prompt a need for disclosure under Article 10 of the Convention is different, as it refers to the specific subject-matter of the document, in this case of the domestic decision (compare *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria,* no. 39534/07, §§ 35-36 and 46, 28 November 2013).

30. The Court notes that the decision sought by the applicant referred to a dispute for slander between two individuals, meaning it was a private party litigation. While admittedly both parties involved in the proceedings were publicly known, the one being a member of the Parliament and the other being a well-known businessman, that element is not sufficient to enable the Court to conclude that the nature of the information sought met the necessary public-interest test in order to prompt a need for disclosure under the Convention (see, generally, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 100, ECHR 2015 (extracts)). The present case is, therefore, distinguishable from *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung* (cited above), in which the applicant association sought access to information of public interest, namely to decisions approving or refusing transfers of agricultural and forest land under domestic legislation, which pursued the aims of preserving land for agricultural and forestry use and avoiding the proliferation of second homes (ibid., §§ 35 - 36).

31. Even though the above considerations are sufficient for the Court to conclude that Article 10 has not come into play in the circumstances of the present case, the Court additionally notes that the applicant did not need a copy of the decision in the exercise of his profession or to contribute to a public debate. While Article 10 guarantees the freedom of expression to "everyone", the Court has held that an important consideration is whether the person seeking access to the information in question does so with a view to informing the public in the capacity of a public "watchdog" (see *Magyar Helsinki Bizottság*, cited above, § 168). The applicant, however, did not invoke any special role that he might have had in enhancing the public's access to news and facilitating the dissemination of information assimilated to that of "public watchdogs" in so far as the protection afforded by Article 10 is concerned. The purpose of the applicant's activities cannot therefore be said to have been an essential element of informed public debate.

32. It follows from the above-mentioned factors that the present case is distinguishable from the Court's judgments in *Társaság* and *Magyar Helsinki Bizottság* (both cited above) in which Article 10 was applicable as the applicants in those case, an association and an NGO respectively, wished to exercise the right to impart information on a matter of public interest and had sought access to information to that end. It is also distinguishable from the Court's judgments in *Roşiianu* (cited above), in which the applicant wished to receive and impart information of general interest in his capacity as a journalist.

33. In view of those considerations, the Court does not find it necessary to rule on whether the information sought by the applicant was ready and available. It concludes that receiving a copy of decision no. 1830/2013 of the multi-member first-instance civil court of Athens was not instrumental to the applicant's exercise of his freedom to expression. Article 10 did not, in the circumstances of the case, give the applicant the right to obtain a copy of the requested decision, nor did it embody an obligation on the Government to impart such information to the applicant. The application must therefore be rejected as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 September 2017.

Abel Campos
Registrar

Kristina Pardalos
President