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

FIRST SECTION

DECISION

Application no. 73489/17
Michail SOTIRIADIS
against Greece

The European Court of Human Rights (First Section), sitting on 8 November 2022 as a Committee composed of:

Erik Wennerström,
Lorraine Schembri Orland,
Ioannis Ktistakis*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 73489/17) 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 5 October 2017 by a Greek national, Mr Michail Sotiriadis ("the applicant"), who was born in 1965 and lives in Melissochori Thessalonikis, and was represented before the Court by Mr Ch. Kliosis, a lawyer practising in Athens;

the decision to give notice of the complaint concerning Article 1 of Protocol No. 1 to the Convention, taken alone or in conjunction with Article 14 of the Convention, to the Greek Government ("the Government"), represented by their Agent, Mrs Asimina Dimitrakopoulou, Senior Advisor 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 right of property in respect of the imposition of income tax on the applicant.

2. The applicant is married and the father of sixteen children, twelve of whom were dependent and living with the family at the material time.

3. In 2014 the applicant and his wife filed a joint tax return for income received between 1 January and 31 December 2013. The applicant declared an income of 36,834.43 euros (EUR) for himself and EUR 1,775.44 for his wife.

4. The applicant received family allowances amounting to EUR 7,920 in respect of 2013.

5. By a tax assessment of 23 July 2014, the basic tax due was calculated at EUR 9,280.83 for the applicant and EUR 387.15 for his wife. The amounts of EUR 554.20 and EUR 384.54 were deducted respectively in tax relief. Taking into account supplementary taxes, the total amount of tax payable by the applicant amounted to EUR 8,727.46 and EUR 3.44 by his wife. After deduction of the tax previously withheld from the applicant (EUR 4,973.49), and the addition of other applicable contributions, he was required to pay, on the basis of the joint tax return, a total of EUR 4,738.22.

6. On 25 July 2014 the applicant lodged a complaint against the 2013 tax assessment with the competent tax authority. He contended that the *per capita* income for the members of his family was so low that they could not shoulder the financial burden relating to payment of the tax while maintaining a decent standard of living. He further argued that essential living expenses for his family, amounting to EUR 33,400.17, should have been deducted and not considered as taxable income because, if they had to pay tax on this amount which he had spent, his family would experience significant financial difficulty. He thus requested a new tax assessment and the imposition of tax only on the amount remaining after the deduction of the family expenses.

7. On 20 October 2014 the tax authority dismissed his complaint. It stated that neither the applicant nor the declared income fell within the categories of persons or income which were exempt from taxation under the tax legislation, while the tax deductions had been correctly calculated.

8. The applicant lodged an application with the Administrative Court of First Instance against the above decision. He argued that, in view of the principles of equality in respect of public charges and respect for human dignity, as laid down in Article 4 § 5 and Article 2 § 1 of the Constitution respectively, the imposition of taxes ought not to result in an excessive financial burden. In States where there was no tax-free regime, as in the instant case, taxpayers ought to be able to provide evidence before the competent court of their inability to pay taxes on that part of their income which had been used to cover the expenses necessary to ensure a decent standard of living for their families. He reiterated the requests in his complaint and further relied on the constitutional provisions on protection of the family.

9. Subsequently, the applicant requested that his case be brought before the Supreme Administrative Court by way of the pilot-trial procedure (*πιλοτική δίκη*) as it concerned an issue of general interest relating to the legislature's failure to make special provision for large families, either by establishing a tax-free regime or by introducing a procedure to establish their

ability to pay taxes. The competent judicial committee submitted the case to the Supreme Administrative Court.

10. On 5 June 2015 the Supreme Administrative Court examined the case under the constitutional provisions on human dignity and the principles of equality, equality in respect of public charges and protection of the family, and dismissed the application. In judgment no. 1087/2017 it held that the legislature was entitled to introduce, restrict or repeal exemptions in the area of income tax, while having regard to social and financial circumstances. The relevant constitutional provisions were to serve as guiding principles and it was within the discretion of the legislature to define the nature and the extent of any special considerations for large families; at the same time, there was no obligation to establish a tax-free regime. For 2013 the tax-free system was replaced by tax relief, based on the condition of being able to demonstrate expenditure. In order to benefit from the full tax discount, taxpayers could submit supporting documents demonstrating expenditure of up to 25% of their declared income, up to a maximum amount of EUR 10,500. The court concluded that the applicable tax legislation, together with the allowance for children and the special large-family allowance provided for in Law no. 4093/2012 and Law no. 4141/2013 respectively, set out a system of State support for large families, which, given the unfavourable economic conditions in the relevant year, was not contrary to the principles of respect for human dignity, equality in respect of public charges and protection of the family.

11. The applicant complained that his taxation for a part of the income which he had been required to spend constituted a violation of his right to property under Article 1 of Protocol No. 1 to the Convention and the tax deduction system constituted, as regards large families, discrimination prohibited by Article 14 of the Convention in conjunction with Article 1 of Protocol No 1.

THE COURT'S ASSESSMENT

12. The Government argued that the applicant had failed to exhaust domestic remedies and, in any event, the application was premature. The applicant submitted that the application was admissible.

13. The Court considers that it is not necessary to examine the question of exhaustion of domestic remedies and of the application being premature, as the complaints are in any event inadmissible for the following reasons.

14. According to the Court's well-established case-law, taxation is in principle an interference with the right to property, since it deprives the person concerned of a possession, namely the amount of money which must be paid (see, among many other authorities, *Burden v. the United Kingdom* [GC], no. 13378/05, § 59, ECHR 2008). The general principles for assessing whether the interference is compatible with Article 1 of Protocol No. 1 and

concerning the particularly wide margin of appreciation were summarised in *Iofil AE v. Greece* ((dec.), no. 50598/13 §§ 32-36, 7 September 2021).

15. In the present case, there is no dispute between the parties that the tax imposed by the fiscal authorities constituted an interference by a public authority with the applicant's right to enjoyment of his possessions and that the interference, provided for by the tax legislation, was lawful, in that it pursued a legitimate aim "in accordance with the general interest". It remains to be examined whether a "fair balance" was struck between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights.

16. The Court reiterates that choices as to what may be classified as taxable income fall within those issues that the domestic legislature is certainly better placed than the Court to assess and determine (see *Cacciato v. Italy* (dec.), no. 60633/16, § 25, 16 January 2018). The Greek legislature was acting well within its area of discretionary judgment in enacting rules for the determination of the taxable income and a system for tax relief and expenditure deduction. No general prohibition on limiting the deduction of expenses to a certain percentage when determining taxable income or obligation to establish a tax-free regime for large families can be derived from Article 1 of Protocol No. 1. The applicable legislation, providing for full tax relief by way of submitting supporting documents showing expenditure of up to 25% of the declared income, up to a maximum amount of EUR 10,500, cannot be considered to be arbitrary as such (see, *mutatis mutandis*, *Di Belmonte v. Italy*, no. 72638/01, § 42, 16 March 2010, and *Cacciato*, cited above, § 25).

17. As to whether the impugned tax imposition imposed an excessive burden on the applicant and fundamentally interfered with his financial situation, the Court notes that the applicant contended that he had spent EUR 33,400.17 to cover the family's expenses and, as his and his wife's joint income amounted to EUR 38,607.12, he had been unable to pay the tax bill of EUR 8,730.90 with the remaining EUR 6,954.88. However, the family had received a total of EUR 7,920 in tax-exempt family allowances for 2013: child allowance, amounting to EUR 1,920, and the special large-family allowance, amounting to EUR 6,000 (EUR 500 for each dependent child). These were intended to cover the children's expenses.

18. Even assuming that all the expenses described by the applicant were unavoidable and could not have been adjusted or eliminated, the additional tax-exempt family allowances could have been used to cover an important amount of this expenditure. The Court thus considers that even if the expenditure deduction was limited, the remaining sum after deduction of the expenses, of EUR 13,129.70 would have been sufficient for the applicant to pay in 2014 not only the remaining tax due (EUR 4,738.22), but also the amount of tax which had previously been withheld (EUR 4,973.49). For this reason, it cannot accept the applicant's argument that he had been taxed

beyond his ability to pay and he had been required to borrow the amounts in question.

19. The Court also notes that there is no evidence in the case file and the applicant did not complain before the domestic courts or the Court that the applicable tax percentage imposed in his case had been excessive or disproportionate and that the levying of this particular tax amount fundamentally undermined his financial situation. This is one of the factors which the Court has given weight to when gauging whether a fair balance has been struck in a given case (see *mutatis mutandis*, *N.K.M. v. Hungary*, no. 66529/11, § 42, 14 May 2013, and the further references cited therein).

20. In view of the foregoing, the Court does not consider that the impugned taxation interfered with the applicant's financial situation to such an extent that it could be considered disproportionate or an abuse of the State's right under Article 1 of Protocol No. 1 to levy taxes. The complaint should therefore be dismissed as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

21. The applicant submitted in his observations that the tax deduction system which did not make a distinction between taxpayers who were single and taxpayers with large families, constituted discrimination prohibited by Article 14 of the Convention in conjunction with Article 1 of Protocol No 1. The Court has established in its case-law that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations. However, Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them (*Horváth and Kiss v. Hungary*, no. 11146/11, § 101, 29 January 2013).

22. For the Court, the evidence submitted by the applicants does not indicate any strong presumption of indirect discrimination. Taxation of large families is attended by safeguards that demonstrate that, in the exercise of its margin of appreciation in the taxation sphere, the State took into account their special needs. The Court notes that the Greek authorities took measures to compound the applicants' financial difficulties in that they were provided with child allowance and special large-family allowance (see paragraphs 10 and 18 above). In these circumstances, the Court is satisfied that there is no appearance of a violation of the applicants' rights under Article 14 of the Convention and this complaint should therefore be dismissed as manifestly ill-founded 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 1 December 2022.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President