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

THIRD SECTION

DECISION

Application no. 65067/16
Stergios TSOURIKAS
against Greece

The European Court of Human Rights (Third Section), sitting on 20 February 2024 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. 65067/16) 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 9 November 2016 by a Greek national, Mr Stergios Tsourikas ("the applicant"), who was born in 1955, lives in Volos and was represented by Mr V. Chirdaris, a lawyer practising in Athens;

the decision to give notice of the application to the Greek Government ("the Government"), represented by their Agent, Ms N. Marioli, President of the State Legal Council, and their Agent's delegate, Ms A. Magrippi, Legal Representative at the State Legal Council;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged violation of the presumption of innocence on account of imposition of civil liability on the applicant despite his acquittal in criminal proceedings.

2. The applicant was the owner of a bakery where in 2000 Z.K., the nine-year-old daughter of his employee V.K., was fatally injured by a kneading machine.

3. By judgment no. 3669/2004 delivered on 19 October 2004, the Volos Criminal Court of First Instance found the applicant guilty of negligent homicide and breach of security measures in the workplace and sentenced him to twenty-six months' imprisonment. The applicant appealed.

4. Following a civil action brought by V.K. and G.K., the mother and sister of the deceased, against the applicant, claiming compensation for the pain and suffering caused due to the girl's deadly injury, the Volos Civil Court of First Instance on 8 September 2006 by judgment no. 222/2006 found the applicant liable at 40% for negligent conduct in not having turned off the main switch of the machine. The court also held that V.K. was liable at 60% as, having parental responsibility for her daughter, she had allowed her to enter the area with dangerous machines and had not supervised her. The court ordered the applicant to pay compensation of 10,570 euros (EUR) to V.K. and EUR 20,000 to G.K.

5. On 31 January 2006, by judgment no. 107/2006, the Larisa Criminal Court of Appeal acquitted the applicant of negligent homicide, accepting that the death was not attributable to his negligence as he had forbidden the mother to allow her daughter to enter the preparation area; even if he had not turned off the central switch, this had not contributed to the death because the kneader had not been started up, but the girl had sustained fractures to the skull and neck by falling into the machine.

6. Following counter-appeals lodged by the applicant and V.K. and G.K., judgment no. 723/2008 of the Larisa Civil Court of Appeal of 12 November 2008 accepted the applicant's appeal, quashed judgment no. 222/2006 of the Volos Civil Court of First Instance and dismissed the action ruling that, although the death of Z.K. was attributable to her dangerous conduct, i.e. entering the preparation area and climbing on the kneader, this conduct was however exclusively attributable to her mother who had allowed her to enter the area, despite the applicant having forbidden it, and failed to supervise her there. It further noted the applicant's acquittal by judgment no. 107/2006.

7. V.K and G.K. appealed on points of law against judgment no. 723/2008 of the Larisa Civil Court of Appeal. The Court of Cassation by judgment no. 1610/2013 of 24 July 2013 quashed the appellate court's judgment with regard to the dismissal of the action against the applicant and remitted the case back to it.

8. On 4 April 2014 the Larisa Civil Court of Appeal issued judgment no. 488/2014, upholding judgment no. 222/2006 (see paragraph 4 above). The court assessed the evidence, including the documents of the criminal file, medical reports and expert opinions, and held that the girl had climbed into the kneader, pushed the "on" button and was fatally injured due to the mixer's rotary motion. The applicant, responsible for the safe functioning of the preparatory area, had not turned off the main switch of the kneader which would have made it impossible to turn on the machine using the button which was accessible to a child. In view of his professional experience as a baker

since 1982 and as an ordinary, experienced and diligent person, he should have been aware that it was dangerous for the main switch to remain activated. Any visitor, such as Z.K., could have started the kneader, causing an accident. It thus found that the death was attributable to the applicant's negligence and accepted that the applicant's omission constituted negligent conduct as regards the safe functioning of a machine at his business, causally linked to Z.K.'s fatal injury.

9. It further noted that, after the applicant had been convicted at first instance, he was acquitted on appeal by judgment no. 107/2006 (see paragraph 5 above) on the grounds that the death was not caused by the kneader rotation but by Z.K.'s falling into it. However, based on its own findings, the civil court found the applicant liable at 40% and the mother at 60% because she, having exclusive parental responsibility, had a duty to supervise the minor, protect her and ensure her safety.

10. The applicant appealed on points of law and in his additional grounds relied on a violation of his presumption of innocence. The Court of Cassation, by judgment no. 344/2016 of 9 May 2016, dismissed the appeal on points of law and held that the grounds of appeal relating to his acquittal were unfounded as the Larisa Civil Court of Appeal, in order to prove its findings, had taken into account the acquittal judgment without undertaking any interpretation as regards the grounds on which the appellant had been acquitted. It did not decide, in any direct or indirect manner, on his criminal guilt, which would cast doubt on the presumption of innocence for the offences of which he had been accused.

11. The applicant complains under Article 6 § 2 of the Convention that the civil courts, by judgments nos. 488/2014 and 344/2016, violated his right to be presumed innocent having regard to the fact that he had been acquitted of the criminal charges.

THE COURT'S ASSESSMENT

12. The general principles concerning the protection provided by Article 6 § 2 are set out in *Ilias Papageorgiou v. Greece* (no. 44101/13, §§ 44-48, 10 December 2020). The Court considers that the civil proceedings were linked to the criminal ones (*ibid.*, § 40).

13. The Court observes that the applicant was acquitted of negligent homicide, because the criminal court found that the death was not attributable to his negligence, and that even if he had not deactivated the main switch, this had not contributed to the death because the kneader had not come into operation and the girl had sustained lethal injuries because of the fall (see paragraph 5 above).

14. The Larisa Civil Court of Appeal, in judgment no. 488/2014, was called to rule on the victim's family's claim for compensation for the applicant's failure to take relevant safety measures in the workplace. It

established the applicant's joint civil liability at 40% and partially accepted the claim, which had its legal basis in Articles 299, 300, 914 and 932 of the Civil Code setting out the general principles on tort liability and the relevant fault. That judgment was upheld by the Court of Cassation in decision no. 344/2016 (see paragraphs 8 and 10 above).

15. While some of that evidence had also been presented before the criminal court, the appellate civil court at this last stage of proceedings was required to examine and re-evaluate in adversarial conditions the totality of the elements, namely the documents of the criminal trial but also additional evidence. Unlike the criminal court, the appellate civil court had to rely on the arguments presented by the parties and apply the rules governing the burden of proof in civil proceedings. The Court of Appeal made a separate assessment of the facts and the evidence in order to determine whether the constitutive element of negligence for establishing civil liability had been fulfilled. It concluded that the girl had been fatally injured due to the mixer's rotary motion and, when assessing the applicant's conduct in relation to ensuring compliance with safety measures in the workplace, held him responsible for not having turned off the central switch, taking into account his professional experience and ordinary diligence requirements. The manner in which it determined the civil tort distinguished it from the criminal offence and did not indicate that the applicant had committed a criminal offence.

16. The Court reiterates that, as a general rule, it is for the national courts to assess the evidence before them. As to the evidentiary value in civil proceedings of decisions delivered in criminal proceedings, it takes note of the Government's reference to Articles 321 and 340 § 2 of the Code of Civil Proceedings from which it is derived that those decisions can be freely assessed and accepts that they must be treated on an equal footing with other types of evidence and that the findings in those decisions can constitute rebuttable positions (see *Lähteenmäki v. Estonia*, no. 53172/10, § 52, 21 June 2016). Thus, the appellate court established the facts and the applicant's liability on the basis of all the evidence submitted before it, which it assessed somewhat differently to the criminal courts.

17. By reference to the relevant provisions of the Civil Code, the Court of Appeal made it clear that it examined only civil liability and no acknowledgment of criminal liability was intended (see *Fleischner v. Germany*, no. 61985/12, § 67, 3 October 2019). According to the domestic law, the outcome of the criminal proceedings was not decisive for the civil case. The family of the victim had a right to claim compensation for the pain and suffering caused by death, regardless of whether the defendant was convicted or, as here, acquitted, and the compensation issue was to be the subject of a separate legal assessment. In this context, the Court has repeatedly emphasised that while exoneration from criminal liability ought to be respected in civil compensation proceedings, it should not preclude the establishment of civil liability to pay compensation arising out of the same

facts on the basis of a less strict burden of proof (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 123, ECHR 2013).

18. Additionally, the joint liability of the applicant was set at 40%, while at 60% for the mother, and the amount of compensation awarded (see paragraph 4 above) cannot be considered as an imputation of criminal liability for the purposes of Article 6 § 2 (see *Ringvold v. Norway*, no. 34964/97, § 39, ECHR 2003-II).

19. As regards the language used by the Court of Appeal, the Court notes that it did not make any statement about the applicant's criminal guilt. The Court of Cassation analysed the judgment of the Court of Appeal holding that, in order to prove its findings, it took into account the acquittal judgment without interpreting the grounds for acquittal. It further stated that it did not decide, directly or indirectly, on his criminal guilt so that it would cast doubt on the presumption of innocence.

20. In that connection, the Court notes the Government's submission that under domestic law the admission of negligence in criminal cases takes into account not only what one "had to do" but also what one personally could do. On the contrary, in civil law, negligence is more objective and is defined in Article 330 of the Civil Code as the "diligence that is required in transactions". The same person may be acquitted by the criminal courts because the element of what he personally could do is missing, but be considered by the civil courts as bearing responsibility because the measures he took were insufficient or inexistent based on objective diligence (see *Ilias Papageorgiou*, cited above, § 22).

21. Read in the context of the judgment as a whole, and given the specific nature and context of the proceedings and the finding of joint civil liability of the applicant and the mother, the expressions used by the civil courts could not reasonably have been understood as an affirmation imputing criminal liability to the applicant. The compensation issue was the subject of a separate legal assessment in civil proceedings based on criteria and evidentiary standards which differed from those applicable to criminal liability, involving private parties only, and where new evidence was taken.

22. In view of the above, the Court of Appeal, which gave detailed reasoning on the relevant facts, and the Court of Cassation, both sitting in a different composition from that in the criminal case, did not make any statement suggesting, either expressly or in substance, that the conditions were fulfilled for holding the applicant criminally liable with respect to the charges of which he had been acquitted.

23. The Court therefore considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, the application is manifestly ill-founded and must be rejected 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 21 March 2024.

Olga Chernishova Deputy Registrar	Yonko Grozev President