Georgiadis v. Greece [Georgiadis c. Grèce]

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EUROPEAN COURT OF HUMAN RIGHTS

In the case of Georgiadis v. Greece (1),

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A (2), as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr F. Gölcüklü,
Mr N. Valticos,
Mr R. Pekkanen,
Mr A.N. Loizou,
Mr A.B. Baka,
Mr D. Gotchev,
Mr P. Kuris,
Mr U. Lohmus,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 24 January and 25 April 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

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Notes by the Registrar

1. The case is numbered 56/1996/675/865. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

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PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 17 April 1996, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 21522/93) against the Hellenic Republic lodged with the Commission under Article 25 (art. 25) by a Greek national, Mr Anastasios Georgiadis, on 27 February 1993.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Greece recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6 and 13 of the Convention (art. 6, art. 13).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. On 27 April 1996, the President of the Court decided, under Rule 21 para. 7 and in the interests of the proper administration of justice, that a single Chamber should be constituted to consider this case and that of Tsirlis and Kouloumpas v. Greece (no. 54/1996/673/859-860). The Chamber to be constituted for that purpose included ex officio Mr N. Valticos, the elected judge of Greek nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)). On the same date, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr R. Pekkanen, Mr A.N. Loizou, Mr A.B. Baka, Mr D. Gotchev, Mr P. Kuris and Mr U. Lohmus (Article 43 in fine of the Convention and

Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Greek Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 25 October 1996 and the applicant's claims for just satisfaction (art. 50) on 31 October 1996.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 January 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr P. Georgakopoulos, Senior Adviser,
Legal Council of State, Delegate of the Agent,
Mrs K. Grigoriou, Legal Assistant,
Legal Council of State, Counsel;

(b) for the Commission

Mr P. Lorenzen, Delegate;

(c) for the applicant

Mr P. Bitsaxis, of the Athens Bar, Counsel.

The Court heard addresses by Mr Lorenzen, Mr Bitsaxis and Mrs Grigoriou and also replies to its questions.

AS TO THE FACTS

I. The circumstances of the case

6. Mr Georgiadis was born in 1963 and lives in Athens.

7. On 3 January 1989 the applicant was appointed minister of religion for the prefectures of Karditsa and Larissa by the Central Congregation of the Christian Jehovah's Witnesses of Greece. He was given authority, inter alia, to perform wedding ceremonies between persons of that faith and to notify such weddings to the competent registry offices. By letter of 13 January 1989 the Director of Internal Affairs of the Prefecture of Karditsa notified the registry offices of Karditsa of his appointment. By letter of 24 January 1989 the registry offices of Larissa were also notified of it.

8. On 11 September 1991 the applicant lodged an application with the Serres Recruitment Office ("the Recruitment Office") to be exempted from military service in accordance with section 6 of Law no. 1763/1988 ("the 1988 Law"), which grants such a right to all ministers of "known religions". On 17 September 1991 the Recruitment Office rejected the application on the ground that Jehovah's Witnesses were not a "known religion".

9. On 7 October 1991 the applicant lodged an appeal with the Director for Recruitment at the General Headquarters for National Defence ("the Director for Recruitment"). It was rejected on 18 December 1991 on the ground that he was not a minister of a "known religion". On the same day, the Recruitment Office ordered the applicant to report for duty at a military training centre in Nauplia on 20 January 1992.

10. The applicant presented himself at the Nauplia centre, as ordered, but refused to join his unit, invoking his status as a minister of a "known religion". Taking the view that the applicant had committed the criminal offence of insubordination (see paragraph 19 below), the military commander of the training centre detained him pending trial in the centre's disciplinary unit and ordered a preliminary investigation into the facts. The investigation completed, the applicant was committed for trial on 29 January 1992. The order for his detention was renewed and he was transferred to the military prison at Avlona.

11. On 13 February 1992 the applicant brought proceedings in the Supreme Administrative Court (Symvoulio tis Epikratias) to have the Director for Recruitment's decision of 18 December 1991 quashed.

12. On 16 March 1992 the Athens Permanent Army Tribunal (Diarkes Stratodikio), composed of one military judge and four ordinary military officers, examined the criminal charges against the applicant. Having heard the evidence and the parties' submissions on the question of the applicant's guilt, the tribunal withdrew for deliberations. After the deliberations, the President announced the verdict. The applicant was acquitted because "there was no act of insubordination" as the applicant had no obligation to perform military service, being a minister of a "known religion".

13. The applicant was immediately released but was ordered to report for duty on 4 April 1992 at the Nauplia centre. On that date the applicant presented himself at the Nauplia centre, where he was ordered to join the military forces. When he refused, he was again charged with insubordination and placed in detention. On 15 April 1992 he was committed for trial.

14. On 8 May 1992, the Athens Permanent Army Tribunal examined the new criminal charges against the applicant. Having heard the evidence and the parties' submissions on the question of the applicant's guilt,

the tribunal withdrew for deliberations. After the deliberations, the President announced the verdict. The applicant was acquitted, because there were doubts as to his intention to commit the criminal offence of insubordination. The following order was attached to the tribunal's verdict and read out with it: "No compensation should be granted to the applicant for his detention pending trial, because his detention was due to his own gross negligence."

15. The applicant was immediately released from Avlona Prison, given leave of absence and ordered to report for duty at the Nauplia centre on 22 May 1992. He was again ordered to join his unit. When he refused he was charged with insubordination and detained.

16. On 7 July 1992 the Supreme Administrative Court quashed the Director for Recruitment's decision of 18 December 1991 on the ground that Jehovah's Witnesses were a known religion and the administrative authorities had not challenged the evidence produced by the applicant that he was a minister of that religion.

17. On 27 July 1992 the applicant was provisionally released following a decision of the Salonika Permanent Army Tribunal sitting in chambers. A certificate of provisional exemption from military service was issued on the ground that the applicant was a minister of a "known religion".

18. On 10 September 1992 the Salonika Permanent Army Tribunal, considered the criminal charges against the applicant. Having heard the evidence and the parties' submissions on the question of his guilt, the tribunal withdrew for deliberations. After the deliberations, the President announced the verdict. The applicant was acquitted, because he had not had the intention of committing the offence of insubordination. The following order was attached to the tribunal's verdict and read out with it: "The State is under no obligation to compensate the applicant for his detention pending trial, because his detention was due to his own gross negligence."

II. Relevant domestic law and practice

A. The Military Criminal Code

19. Article 70 of the Military Criminal Code provides as follows:

> "A member of the armed forces who refuses ... to obey an order by his superior to perform one of his duties is punished ..."

20. On 16 March 1992 the Athens Permanent Army Tribunal held that a Jehovah's Witnesses minister of religion who had refused to collect military clothing when first called upon to join the army was not guilty of insubordination. The tribunal considered that there had been no act of insubordination, because the accused had no obligation to perform military service as he was a minister of a "known religion".

21. Article 434 of the Code provides that where a procedural matter is not regulated in the Military Criminal Code, the Code of Criminal Procedure applies.

B. The Code of Criminal Procedure

22. The relevant provisions of the Code of Criminal Procedure read as follows:

Article 533 para. 2

"Persons who have been detained on remand and subsequently acquitted ... shall be entitled to request compensation ... if it has been established in the proceedings that they did not commit the criminal offence for which they were detained ..."

Article 535 para. 1

"The State shall have no obligation to compensate a person who ... has been detained on remand if, whether intentionally or by gross negligence, he was responsible for his own detention."

Article 536

"1. Upon an oral application by a person who has been acquitted, the court which heard the case shall rule on the State's obligation to pay compensation in a separate decision delivered at the same time as the verdict. However, the court may also make such a ruling proprio motu ...

2. The ruling on the State's obligation to pay compensation cannot be challenged separately; it shall, however, be quashed if the decision on the principal issue of the criminal trial is reversed."

Article 537

"1. A person who has suffered loss may seek compensation at a later stage from the same court.

2. In those circumstances the application must be submitted to the prosecutor [Epitropos] at that court no later than forty-eight hours after the delivery of the judgment in open court."

Article 539 para. 1

"Where it has been decided that the State must pay compensation, the person entitled thereto may bring his claim in the civil courts, which shall not call in question the existence of the State's obligation."

Article 540 para. 1

> "Persons who have been unfairly ... detained on remand must be compensated for any pecuniary loss they have suffered as a result of their ... detention. They must also be compensated for non-pecuniary loss ..."

PROCEEDINGS BEFORE THE COMMISSION

23. Mr Georgiadis applied to the Commission on 27 February 1993. Relying on Articles 3, 5 paras. 1 and 5, 6 para. 1, 9, 13 and 14 of the Convention (art. 3, art. 5-1, art. 5-5, art. 6-1, art 9, art. 13, art. 14), he complained that his detention had been unlawful and amounted to discrimination on account of his religious beliefs, that he had been subjected to inhuman and degrading treatment, and that he did not have a fair hearing in the matter of compensation for his unlawful detention. Lastly, Mr Georgiadis complained under Article 4 para. 1 of Protocol No. 7 (P7-4-1) that he had been twice prosecuted for an offence of which he had been previously acquitted.

24. On 10 October 1994 the Commission declared the application (no. 21522/93) admissible as to the issues arising from the military tribunals' rejection without a hearing of the applicant's claim for compensation and the inadequate reasoning of the relevant decisions. The complaint under Article 5 para. 1 (art. 5-1) was declared inadmissible for failure to exhaust domestic remedies. In its report of 27 February 1996 (Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art. 6-1) and that it was not necessary to examine whether there had been a violation of Article 13 (art. 13).

The full text of the Commission's opinion is reproduced as an annex to this judgment (1).

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Note by the Registrar

1. For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1997-III), but a copy of the Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS TO THE COURT

25. At the hearing, the applicant requested the Court to find that, in his case, Articles 6 para. 1 and 13 (art. 6-1, art. 13) had been violated.

The Government, for their part, asked the Court to reject every allegation of a violation of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 OF THE CONVENTION (art. 6-1)

26. Mr Georgiadis complained that he did not have a fair hearing in the matter of compensation for his allegedly unlawful detention. He invoked Article 6 para. 1 of the Convention (art. 6-1) which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

The Commission agreed with the applicant whereas the Government contested the applicability of Article 6 para. 1 (art. 6-1) to the proceedings in question.

A. Applicability of Article 6 para. 1 (art. 6-1)

27. Mr Georgiadis argued that, when detention follows a conviction that is overturned on appeal, the ensuing claim for compensation is governed by the civil law: it can be transferred, inherited and otherwise disposed of following the modalities of the civil law. In his submission, it is irrelevant that the adjudicating authority is a military tribunal ruling in public-law proceedings; it is a civil court which decides on the amount of compensation (see paragraph 22 above). In these circumstances, the proceedings on his entitlement to compensation in respect of his detention following conviction involved a "determination of his civil rights" within the meaning of Article 6 para. 1 (art. 6-1).

28. The Commission considered that the outcome of the proceedings before the military courts was directly decisive for the applicant's right to compensation. It concluded that, by refusing to grant compensation, the permanent army tribunals "determined" a "right" which could arguably be said to be recognised under domestic law. It further considered that the applicant's claims under Article 533 of the Code of Criminal Procedure (see paragraph 22 above) concerned pecuniary and non-pecuniary damage resulting from lengthy periods of detention. Therefore, the right at issue was a "civil right" within the meaning of Article 6 of the Convention (art. 6), notwithstanding the origin of the dispute and the fact that a criminal court had jurisdiction.

29. The Government alleged that, since the applicant had failed to lodge any claim for compensation, no dispute could be said to have arisen. In any event - the Government further submitted - the non-contractual liability of the State in respect of acts carried out iure imperii is distinguishable from the system that governs civil liability in private law. A major difference is that a claimable right to compensation, enforceable in civil courts, only arises after

the criminal court has recognised its existence. In so doing, criminal courts enjoy absolute discretion. At the procedural stage to which the applicant was referring there was therefore no "civil right" as such.

30. According to the principles laid down in its case-law (see, amongst other authorities, the judgments of Zander v. Sweden, 25 November 1993, Series A no. 279-B, p. 38, para. 22, and Kerojärvi v. Finland, 19 July 1995, Series A no. 322, p. 12, para. 32), the Court must ascertain, in particular, whether there was a dispute ("contestation") over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, and whether the outcome of the proceedings at issue was directly decisive for the right in question.

31. As to the Government's allegation that no claim for compensation was ever lodged, the Court fails to see what useful purpose such a procedural action would have served given the army tribunals' proprio motu rulings and their final character.

There was thus a "dispute" for the purposes of Article 6 para. 1 (art. 6-1).

32. The Court further observes that, regardless of its characterisation under domestic law, Article 533 para. 2 of the Code of Criminal Procedure creates a right for a person having been detained to claim compensation following his or her acquittal (see paragraph 22 above). However, the first paragraph of Article 535 (ibid.) excludes from compensation situations where it is established that the detained person was "intentionally or by gross negligence" responsible for his own detention. Lastly, under Article 536 para. 2 (ibid.) decisions regarding the obligation of the State to pay compensation cannot be challenged separately.

33. Given the succinct rulings whereby the army tribunals of Athens and Salonika held that "no compensation should be granted to the applicant for his detention pending trial, because his detention was due to his own gross negligence" (see paragraphs 14 and 18 above), it cannot be denied that the outcome of the Article 533 proceedings was directly decisive for establishing the applicant's right to compensation.

34. It remains to be established whether such a right can be considered a "civil" right, as pleaded by the applicant.

In this respect, the Court recalls that the concept of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law and that Article 6 para. 1 (art. 6-1) applies irrespective of the status of the parties, as of the character of the legislation which governs how the dispute is to be determined and the character of the authority which is

invested with jurisdiction in the matter (see, among other authorities, the Baraona v. Portugal judgment of 8 July 1987, Series A no. 122, p. 18, para. 42).

35. The Court notes that although the prerequisite for the operation of Article 533 of the Code of Criminal Procedure, that is detention followed by an acquittal, concerns public-law issues, the right to compensation created by that provision is, by its very nature, of a civil character ("de caractère civil"). Its typically private-law features - which have not been contested by the Government - confirm this conclusion as does the fact that it is for the civil courts to decide on the precise amount of the compensation to be granted (see paragraph 22 above).

36. Against this background, the Court concludes that the question of the application of Article 533 to the applicant's case fell within the ambit of Article 6 para. 1 of the Convention (art. 6-1).

B. Compliance with Article 6 para. 1 (art. 6-1)

37. The applicant complained that he was not given a chance to be heard in the matter of compensation for his detention: the issue of the State's liability was examined proprio motu by the military courts together with the question of guilt. The applicant also alleged that an additional breach of Article 6 para. 1 (art. 6-1) was committed by the military tribunals' failure to provide adequate reasons for their decisions.

38. The Commission noted that it had not been established in an unequivocal manner that the applicant had waived his right to be heard, and agreed that the requirements of Article 6 para. 1 (art. 6-1) had not been complied with.

39. The Government submitted that since the applicant had not filed any claim for compensation, no argument was to be heard and no allegation to be refuted in a reasoned decision. Article 6 para. 1 (art. 6-1) had therefore not been breached.

40. The Court is of a different view. No decision on the question of compensation should have been taken without affording the applicant an opportunity to submit to the courts his arguments on the matter. A procedure whereby civil rights are determined without ever hearing the parties' submissions cannot be considered to be compatible with Article 6 para. 1 (art. 6-1). In addition, the permanent army tribunals' rulings proprio motu on the question of compensation effectively precluded the applicant from making an application himself (see paragraph 22 above). Moreover, it was not open to him to challenge these rulings (ibid.).

41. As to the alleged lack of adequate reasons in the decisions of the military tribunals, it is to be noted that, in discarding the

State's liability for the applicant's detention, the domestic courts referred to the applicant's own "gross negligence". In doing so, they repeated the wording of Article 533 para. 2 (see paragraph 22 above).

42. The Court recalls that the extent to which a court's duty to give reasons applies may vary according, inter alia, to the nature of the decision. Whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention (art. 6), can only be determined in the light of the circumstances of the case (see the Ruiz Torija v. Spain judgment of 9 December 1994, Series A no. 303-A, p. 12, para. 29).

43. In the present case, the domestic courts decided to rule out the State's liability for the applicant's detention on account of his own "gross negligence". The lack of precision of this concept, which involves an assessment of questions of fact, required that the courts give more detailed reasons, particularly since their finding was decisive for the applicant's right to compensation.

The Court therefore concludes that for this reason too there has been a violation of Article 6 para. 1 (art. 6-1).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION (art. 13)

44. The applicant complained that since the decisions of the military tribunals concerning compensation could not be challenged no effective remedy under national law for the violation of his rights under the Convention was available to him. In his submission, this was in breach of Article 13 of the Convention (art. 13), which reads:

> "Everyone whose rights and freedoms as set forth in [the] 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."

45. In view of its findings concerning Article 6 para. 1 of the Convention (art. 6-1), the Court does not consider it necessary to examine the case under Article 13 (art. 13).

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION (art. 50)

46. Under Article 50 of the Convention (art. 50),

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

47. Mr Georgiadis sought compensation in the amount of 18,000,000 drachmas (GRD).

48. For the Government the claim was unjustified and unsupported by any evidence of damage. An award of GRD 600,000 should be sufficient to cover both damage and costs in this case and in the case of Tsirlis and Kouloumpas v. Greece, which were pleaded jointly (see paragraph 3 above).

49. The Court notes that Mr Georgiadis' complaint under Article 5 para. 1 (art. 5-1) was not declared admissible by the Commission (see paragraph 24 above). The Court's finding of a violation in this respect is limited to his complaint under Article 6 para. 1 (art. 6-1) that, upon acquittal, he did not have a fair hearing in the matter of compensation for his detention.

In so far as his claim for just satisfaction concerns pecuniary damage, the Court cannot speculate as to the outcome of the compensation proceedings had he benefited from all the safeguards enshrined in Article 6 (art. 6). The claim must therefore be rejected.

As to any possible non-pecuniary damage sustained, the Court considers that the present judgment in itself constitutes sufficient just satisfaction.

B. Costs and expenses

50. The applicant claimed a total of GRD 4,650,000 in respect of legal costs and expenses incurred both in the domestic proceedings and before the Convention institutions.

51. The Government found the sum excessive, whereas the Delegate of the Commission left the matter to the Court's discretion.

52. The Court, making an equitable assessment as required by Article 50 (art. 50), awards the applicant GRD 750,000 in respect of costs and expenses.

C. Default interest

53. According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 para. 1 of the Convention (art. 6-1);

2. Holds that it is not necessary to examine the applicant's complaint under Article 13 of the Convention (art. 13);

3. Holds that this judgment constitutes sufficient just satisfaction for any non-pecuniary damage sustained;

4. Holds

(a) that the respondent State is to pay to the applicant, in respect of costs and expenses, within three months, 750,000 (seven hundred and fifty thousand) drachmas;

(b) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;

5. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 May 1997.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar

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