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

FIRST SECTION

CASE OF GOROU v. GREECE (N° 2)

(Application no. 12686/03)

JUDGMENT

STRASBOURG

14 June 2007

THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
20/03/2009

This judgment may be subject to editorial revision

In the case of Gorou v. Greece (n° 2),

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

Mr L. LOUCAIDES, *President,*
Mr C.L. ROZAKIS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges,*

and Mr S. NIELSEN, *Section Registrar,*

Having deliberated in private on 24 May 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 12686/03) 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") by a Greek national, Mrs Anthi Gorou ("the applicant"), on 23 January 2003.

2. The applicant was represented by Mr H. Mylonas, a lawyer practising in Athens. The Greek Government ("the Government") were represented by their Agent's delegates, Mr K. Georgiadis, Adviser at the State Legal Council, and Mr I. Bakopoulos, Legal Assistant at the State Legal Council.

3. The applicant's complaint concerned, in particular, under Article 6 § 1 of the Convention, the fairness and length of proceedings that she had initiated by filing a criminal complaint.

4. By a decision of 14 February 2006 the Chamber declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is a public servant in the Ministry of National Education. On 2 June 1998 she filed a criminal complaint for perjury and defamation against S.M., with an application to join the proceedings as a civil party, but without seeking reparation. S.M., a public servant in the same ministry, is the applicant's immediate superior. She alleged in particular that, in connection with an administrative investigation opened against her, S.M. had stated that she did not observe working hours and did not get on well with her colleagues.

7. On 26 September 2001, when the case was heard before the Athens Criminal Court, the applicant reiterated her civil-party application and adduced her arguments. On the same day, the Athens Criminal Court acquitted S.M. of the charges laid against him, finding that the applicant's allegations were unsubstantiated. In particular, after examining all the evidence, the court considered that the offending remarks had been truthful and that it had not been the intention of the accused to defame or insult the applicant (judgment no. 74941/2001).

8. On 5 August 2002 this judgment was finalised and entered in the register of the Criminal Court.

9. On 24 September 2002 the applicant requested State Counsel at the Court of Cassation to lodge an appeal on points of law against judgment no. 74941/2001 of the Athens Criminal Court. She alleged, in particular, that the judgment did not contain sufficient reasoning.

10. On 27 September 2002 the applicant's request was dismissed by State Counsel at the Court of Cassation, who endorsed the application itself with the handwritten comment: "there is no legal or well-founded ground of appeal to the Court of Cassation".

II. RELEVANT DOMESTIC LAW

11. The Code of Criminal Procedure contains the following relevant provisions:

Article 139

"Judgments, orders of the chamber of judges, and orders of the investigating judge or of the public prosecutor shall give specific and precise reasons ...

...

Even where it is not required by a specific provision, all judgments and orders shall include reasoning, whether they are final or interlocutory and whether or not they depend on the discretion of the judge hearing the case."

Article 505 § 2

"State Counsel at the Court of Cassation shall be entitled to appeal on points of law against any decision within the time-limit provided for in Article 479 § 2 ..."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

12. The applicant considered that the decision whereby State Counsel at the Court of Cassation had dismissed her request for an appeal on points of law had not been sufficiently reasoned. She further complained about the length of the proceedings in question. She relied on Article 6 § 1 of the Convention, of which the relevant parts read as follows:

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

A. Reasoning of the decision of State Counsel at the Court of Cassation

13. The applicant observed that, according to established practice in domestic law, a civil party could lodge an appeal on points of law through the intermediary of State Counsel at the Court of Cassation. In her submission, when the domestic legal order offered a remedy to an individual litigant, the State had an obligation to ensure that the latter enjoyed the fundamental guarantees of Article 6. In the present case, however, the total lack of reasoning in the decision of State Counsel at the Court of Cassation had precluded any possibility of verifying that the decision was not improper or arbitrary.

14. The Government argued that State Counsel's task was confined to representing the public and social interest in criminal proceedings. They added that the decision as to the appropriateness of allowing the applicant's request for an appeal to be lodged on points of law had fallen exclusively within State Counsel's discretion.

15. The Court reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice,

judgments of courts and tribunals should adequately state the reasons on which they are based (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). The extent to which this duty applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain* and *Hiro Balani v. Spain*, judgments of 9 December 1994, Series A no. 303-A, p. 12, § 29, and no. 303-B, pp. 29-30, § 27; and *Higgins and Others v. France*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 60, § 42).

16. In the present case, the Court observes that State Counsel at the Court of Cassation dismissed the applicant's request for an appeal on points of law against judgment no. 74941/2001 simply by writing a few words on the application itself. In order to ascertain whether such reasoning could be regarded as sufficient, the Court must take into account, among other things, the nature of the dispute concerned. In this connection, it notes that the case did not raise any complex questions. The issue was in fact to determine whether the remarks of the applicant's immediate superior concerning her professional conduct could be characterised as defamatory or not. In its judgment no. 74941/2001 the Athens Criminal Court considered that the impugned allegations were well-founded and that the accused had never intended to defame or insult the applicant. Considering that this decision was not sufficiently reasoned, the applicant tried to lodge an appeal on points of law through the intermediary of State Counsel at the Court of Cassation.

17. Having regard to the above-mentioned circumstances, and in particular the straightforward nature of the dispute and the clear findings of the Criminal Court, the Court considers that it would be unreasonable to hold that State Counsel should have set out at length and in detail the reasons for which he considered it inappropriate, in this case, to lodge an appeal on points of law against the decision. The Court is thus of the opinion that by writing the words "there is no legal or well-founded ground of appeal to the Court of Cassation", State Counsel upheld the decision of the Criminal Court after a full examination of the case, espousing the reasoning of that court (see *García Ruiz*, cited above). There is nothing to warrant the finding that more developed reasoning would have been desirable.

Accordingly, there has been no violation of Article 6 § 1 of the Convention.

B. Length of the proceedings

18. The applicant alleged that the length of the proceedings had entailed a breach of the "reasonable time" principle enshrined in Article 6 § 1 of the Convention.

19. The Government contended, for their part, that the judicial authorities hearing the case had given their rulings within a reasonable time.

20. The period to be taken into consideration began on 2 June 1998, when the applicant lodged her complaint with the public prosecutor at the Athens Criminal Court, and ended on 27 September 2002, when State Counsel at the Court of Cassation dismissed her request for an appeal to be lodged. It thus lasted for four years and over three months, for one level of jurisdiction.

21. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria enshrined in its case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake in the dispute for the interested parties (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

22. The Court has dealt, on many occasions, with cases raising questions similar to those of the present instance and has found violations of Article 6 § 1 of the Convention (see *Ouranio Toxo and Others v. Greece*, no. 74989/01, §§ 17-18 and 28-30, ECHR 2005-X).

23. Having examined all the evidence before it, the Court considers that the Government have not adduced any fact or argument that could lead to a different conclusion in the present case. In the light of its case-law in such matters, the Court considers that in the present case the length of the proceedings complained of was excessive and failed to satisfy the "reasonable time" requirement.

There has accordingly been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

25. The applicant claimed 17,500 euros (EUR) in respect of the non-pecuniary damage alleged.

26. The Government submitted that a finding of a violation would in itself constitute just satisfaction.

27. The Court considers that the applicant sustained, on account of the excessive length of the proceedings, non-pecuniary damage that would not

be sufficiently compensated for by the finding of a violation. Ruling on an equitable basis as required by Article 41, the Court awards EUR 4,000 to the applicant under this head, plus any tax that may be chargeable.

B. Costs and expenses

28. The applicant also claimed EUR 3,000 for the costs and expenses incurred in the proceedings before the Court. She produced two invoices, for a total amount of EUR 2,300, in respect of the fees that she had already paid for her representation before the Court.

29. The Government considered that the amount claimed by the applicant was excessive.

30. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). Making its assessment on an equitable basis, the Court awards the applicant EUR 2,300 for costs and expenses, plus any tax that may be chargeable.

C. Default interest

31. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds*, by four votes to three, that there has been no violation of Article 6 § 1 of the Convention in respect of the fairness of the proceedings;

2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings;

3. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, and EUR 2,300 (two thousand three hundred euros) for costs and expenses, plus any tax that may be chargeable on those amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 14 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NIELSEN	L. LOUCAIDES
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Spielmann, joined by Judges Vajić and Kovler, is annexed to this judgment.

L.L
S.N.

PARTLY DISSENTING OPINION OF JUDGE SPIELMANN JOINED BY JUDGES VAJIĆ AND KOVLER

(Translation)

1. I do not share the view of the majority that there has been no violation of Article 6 § 1 of the Convention as regards the reasoning of the decision of State Counsel at the Court of Cassation.

2. It must be recalled that the applicant brought proceedings for defamation and that the Criminal Court, in judgment no. 74941/2001 of 26 September 2001, considered that the offending remarks had been truthful and that the accused had had no intention of defaming or insulting the applicant. She then requested State Counsel at the Court of Cassation to lodge an appeal on points of law against that judgment. She alleged, among other things, that it had not been sufficiently reasoned. State Counsel at the Court of Cassation dismissed the applicant's request. He endorsed the application itself with the handwritten comment: "there is no legal or well-founded ground of appeal to the Court of Cassation".

3. The question that the applicant wished to refer to the adjudication of the Court of Cassation was a purely legal one: namely, whether the judgment had been sufficiently reasoned.

4. Under Greek law, the exercise of the right of appeal to the Court of Cassation depends on the discretion of State Counsel at that court. He thus acts as a filtering mechanism for access to the Court of Cassation.

5. It follows from Article 139 of the Code of Criminal Procedure (see paragraph 11 of the judgment) that State Counsel was supposed to have given reasons in his response to the applicant's request.

6. In the present instance, State Counsel at the Court of Cassation dismissed the applicant's request without giving a properly reasoned decision. The dismissal was expressed in a few words written on the actual application. The words "there is no legal or well-founded ground of appeal to the Court of Cassation" mean quite simply that "the applicant's case is devoid of merit".

7. According to the Court's settled case-law, Article 6 § 1 of the Convention obliges courts to give reasons for their decisions (see *Van de Hurk v. the Netherlands*, judgment of 19 April 1994, Series A no. 288, p. 20, § 61) and judicial decisions must sufficiently indicate the reasons on which they are based (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). The extent of that obligation may vary according to the nature of the decision and must be considered in the light of the circumstances of each case (see *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, p. 12, § 29; *Hiro Balani v. Spain*, judgment of 9 December 1994, Series A no. 303-B, pp. 29-30, § 27; and

Higgins and Others v. France, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 60, § 42).

8. It is true that, in the present case, the complaint submitted by the applicant under Article 6 § 1 of the Convention did not concern the lack of reasoning in a decision emanating from a court. It is also true that State Counsel is not bound, as regards the reasoning of decisions within his remit, by the same obligations as those of judges.

9. However, the Court has already had occasion to criticise the practice whereby State Counsel in Greece have dismissed, by laconic handwritten notes, requests submitted to them by litigants (see, *mutatis mutandis*, *Gorou v. Greece (no. 4)*, no. 9747/04, 11 January 2007).

In the case of *Gorou v. Greece (no. 4)*, cited above, the Court found as follows:

> "22. ... The Court notes that State Counsel essentially represents the interests of society in criminal proceedings (see *Kampanis v. Greece*, judgment of 13 July 1995, Series A no. 318-B, p. 48, § 56). Moreover, it is clear from Article 24 of the Code on Judicial Organisation and the Status of Judicial Organs (see paragraph 13 above) that State Counsel enjoys guarantees of independence from both the executive and the parties to the dispute. In addition, as far as the present case is concerned, the response to the applicant's request did not depend on the discretion of State Counsel at the Court of Cassation. On the contrary, in accordance with Article 139 of the Code of Criminal Procedure (see paragraph 14 above) he was supposed to give reasons in his response."

10. I therefore consider that the lack of specific reasoning to substantiate the finding that the applicant's request did not contain any legal or well-founded ground of appeal was capable of rendering State Counsel's decision arbitrary, having regard in particular to its decisive nature for the applicant's right to appeal to the Court of Cassation.

11. Accordingly, I am of the opinion that there has been a violation of Article 6 § 1 of the Convention under this head.