



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

FIRST SECTION

**CASE OF SYNGELIDIS v. GREECE**

*(Application no. 24895/07)*

JUDGMENT

STRASBOURG

11 February 2010

**FINAL**

*28/06/2010*

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Syngelidis v. Greece,**

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

Nina Vajić, *President*,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

Spyridon Flogaitis, *ad hoc judge*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 January 2010,

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

**PROCEDURE**

1. The case originated in an application (no. 24895/07) 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, Mr Polychronis Syngelidis (“the applicant”), on 1 June 2007.

2. The applicant was represented by Mr K. Christodoulou and Mr S. Tsakyrakis, lawyers practising in Athens, and Mr D. Pannick, a barrister practising in London. The Greek Government (“the Government”) were represented by their deputy Agents, Mr G. Kanellopoulos, Adviser, State Legal Council, and Mrs Z. Hatzipavlou, Legal Assistant, State Legal Council.

3. On 27 May 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. Mr Rozakis, the judge elected in respect of Greece, withdrew from sitting in the case (Rule 28 of the Rules of Court). The Government accordingly appointed Mr S. Flogaitis to sit as an *ad hoc* judge (Rule 29).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. Background facts

5. The applicant was born in 1957 and lives in Athens. He is a businessman, who married M.A. on 20 September 2003. At the time of their marriage M.A. was already a member of the Greek parliament (MP). On 24 March 2004 their son was born.

6. At the end of 2004 the applicant's marriage broke down. It was pronounced dissolved by mutual consent by the Athens Court of First Instance on 7 July 2005.

7. The applicant and M.A. concluded an agreement on 14 December 2004 resolving issues of custody and access in relation to their son. These arrangements were endorsed by a formal decision of the Athens Court of First Instance of 20 January 2005 (decision no. 528/2005). In particular, M.A. was to have custody of the child until he came of age, and he was to live with her. The applicant was entitled to open access to his son, subject to the child's needs, and certain minimum periods and days of contact were specified. In fact, he was entitled to see his son every day between 5 p.m. and 8 p.m.

8. On a number of occasions the applicant was unable to have contact with his son in accordance with the provisions of the court's order.

#### B. Domestic proceedings

9. On 20 October 2005 the applicant lodged an indictment with the prosecutor of the Athens Court of First Instance based on Article 232A of the Criminal Code. He requested the sum of ten euros by way of nominal compensation for the non-pecuniary damage which M.A.'s breach of decision no. 528/2005 had caused him, reserving his right to seek further compensation before the civil courts.

10. On 24 August 2006 the prosecutor of the Athens Court of First Instance referred the indictment to the prosecutor of the Supreme Court. The matter was referred to the Minister of Justice on 30 August 2006 for onward transmission by him to the President of the Greek parliament, so that leave of Parliament to bring the proceedings could be sought under Article 62 of the Greek Constitution. The file was received by Parliament on 3 October 2006.

11. On 28 November 2006 the Parliament's Ethics Committee gave the opinion that M.A.'s immunity should not be lifted. In its report the

Committee considered that “one of the grounds provided for by Article 83 § 3 of Parliament's Regulations applied in this case”.

12. On 6 December 2006, by a majority of 107 votes to 68 following a secret ballot, Parliament, sitting in plenary session, refused to grant leave. No reasons were given for its decision.

### **C. Further developments in the case**

13. In the meantime, on 31 March 2005, M.A. had brought criminal proceedings against the applicant for placing a security guard outside her building after having allegedly received telephone calls threatening him and his family. These proceedings were subsequently dismissed both at first instance and on appeal.

14. On 20 December 2005 the Athens Court of First Instance varied the custody arrangements. The court's order made specific provision for the payment of a 1,000-euro fine by M.A. should she breach any of its provisions (decision no. 9599/2005). M.A. has allegedly consistently failed to comply with these revised arrangements. On 20 March 2007 and 26 March 2007 the applicant lodged two further indictments with the prosecutor of the Athens Court of First Instance following alleged breaches of the court's decision. The applicant again sought compensation for non-pecuniary damage.

15. On 9 May 2007 the prosecutor of the Athens Court of First Instance referred the indictment dated 26 March 2007 to the prosecutor of the Supreme Court. The matter was referred to the Minister of Justice on 22 May 2007 for onward transmission by him to the President of the Greek Parliament, so that leave of Parliament could be sought under Article 62 of the Greek Constitution. On 22 May 2008 the Parliament's Ethics Committee decided that the request should be rejected without being placed before the full Parliament for consideration, on the basis that the request for waiver of immunity was substantially the same as the first request.

## **II. RELEVANT DOMESTIC LAW AND PRACTICE**

### **A. The Constitution**

16. The relevant parts of the Greek Constitution provide:

#### **Article 53**

“1. The members of parliament shall be elected for a term of four consecutive years, commencing on the day of the general elections...”

**Article 61**

“1. A member of parliament shall not be prosecuted or in any way interrogated for an opinion expressed or a vote cast by him in the discharge of his parliamentary duties...

2. A member of parliament may be prosecuted only for libel, under the relevant law, after leave has been granted by Parliament...”

**Article 62**

“During the parliamentary term members of parliament shall not be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by Parliament...

...No leave is required when members of parliament are caught in the act of committing a felony...”

**B. The Criminal Code**

17. The relevant parts of the Greek Criminal Code provide:

**Article 63**

“Persons who are entitled, under the Civil Code, to compensation for damage for non-pecuniary harm and restoration of damage may join the criminal proceedings as civil parties”

**Article 232A**

“Anyone who intentionally fails to comply with a temporary order of a judge or court or with a provision of a court decision by which they are obliged to act or to refrain from acting...may be punished by up to one year's imprisonment...”

**C. The Civil Code**

18. The relevant parts of the Greek Civil Code provide:

**Article 914**

“Whoever unlawfully and culpably causes damage to another shall be bound to make reparation to the other for any damage thus caused...”

**Article 932**

“In the case of an unlawful act, the court may, irrespective of any award of compensation for pecuniary damages, award reasonable compensation ... for any non-pecuniary harm suffered...”

#### **D. The Civil Procedure Code**

19. Articles 946 and 947 of the Civil Procedure Code also enable a court to punish non-compliance with a judgment or order by imprisonment or by a fine of up to 5,900 euros.

20. By virtue of Article 1048 of the Civil Procedure Code, a court may not order the imprisonment of a member of parliament during his or her mandate and for four weeks after the mandate expires.

#### **E. The Regulations of Parliament**

21. Article 83 of the Regulations of Parliament provides as follows:

“1. Petitions by public prosecutors for leave to commence criminal proceedings against an MP under Article 61 § 2 and Article 62 § 2 of the Greek Constitution, having first been checked by the Supreme Court's prosecutor, shall be submitted to Parliament through the Minister of Justice and registered in a special book according to the order of their introduction...

...

3. Having heard the MP in respect of whom the lifting of immunity is sought, if he or she wishes to be heard... the relevant Committee shall examine, on the basis of the documents forming part of the request, whether the offence for which the lifting of the immunity is sought is related to the MP's political activity; whether the prosecution is politically motivated; or whether it is aimed at undermining the authority of Parliament or of the MP, or at obstructing, to a significant extent, the exercise of their functions, or at influencing the operation of Parliament or of the parliamentary group of which the MP is a member.

4. Within a fixed period set by the President of the Parliament, the Committee shall prepare a report without examining the veracity of the accusation...

...

5...after the Committee submits its report on the issue concerned, the petition shall be entered in the agenda of the Parliament in plenary session...

...

7. Parliament shall decide on the petition by means of a show of hands... The MP in respect of whom the lifting of immunity is sought, the presidents of the political parties or their substitutes if they wish, may give their opinion... Parliament may decide on the basis of a secret ballot if proposed by the President or by the president of the political party to which the MP belongs...”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

22. The applicant complained, under Article 6 § 1 taken alone and in conjunction with Article 14 of the Convention, that the Greek parliament's refusal to waive M.A.'s parliamentary immunity had breached his right of access to a court. These Convention provisions, in so far as relevant, provide as follows:

#### Article 6 § 1

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

#### Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

### A. Admissibility

#### 1. *The parties' submissions*

23. The Government argued that the refusal of the Greek parliament to waive the immunity of M.A. did not raise any issues under Article 6 of the Convention because it did not affect the applicant's civil rights. First, they argued that the applicant's behaviour showed that his purpose in joining the proceedings as a civil party was primarily to obtain the defendant's conviction. The Government noted in this connection that, when lodging his indictment with the prosecutor of the Athens Court of First Instance, the applicant had merely claimed the symbolic amount of ten euros, without prejudice to the satisfaction of all his civil rights before the civil courts. Second, the Government contended that, even if the applicant was successful in obtaining a verdict against his former wife, it would not be “directly decisive” since any consequences of the said conviction on the matter of her compliance with the terms of the applicant's access to his child would have been uncertain and remote. Third, the Government submitted that the present application fell outside the scope of Article 6 § 1 because decision no. 528/2005, with which the applicant's wife had failed to comply was an interim measure under the domestic law.



24. The Government submitted, further, that the applicant had not exhausted available domestic remedies. They noted that, in addition to criminal prosecution, Article 947 of the Code of Civil Procedure provided that a civil action could be brought against a party who had failed to allow access to a child. The Government contended that, since a waiver of immunity was not a necessary pre-condition for bringing a civil action against an MP, the applicant should have used this procedure before applying to the Court.

25. The applicant observed that Article 6 § 1 applied in the present case as it was not suggested by the Government that the applicant's case had been brought as an *actio popularis*. Moreover, the applicant noted that it was not a case in which he sought private revenge as he had made it clear throughout the domestic proceedings that his aim was to obtain compensation for the non-pecuniary harm and frustration he had suffered as a result of his wife's failure to comply with the decision of the domestic court. The applicant added that the non-pecuniary harm suffered in the present case was particularly grave, since the court's order concerned contact between himself and his son, which was at the heart of their personal and family lives. As regards the Government's argument that a verdict against the applicant's wife would not directly affect his access to his son, the applicant contended that this submission was irrelevant. In particular, he noted that the civil right at issue in the present case was the right to become a civil party in criminal proceedings brought against his ex-wife, and to claim compensation in those proceedings for non-pecuniary damage caused by her failure to comply with court orders regulating the applicant's access to his son. Finally, the applicant asserted that, although the original domestic court order was an interim one, the action which he had sought to bring in the context of the present case was, as a matter of Greek law, a wholly separate claim.

26. Secondly, the applicant asserted that domestic law entitled him to file a criminal indictment in combination with a request for monetary compensation. Thus, the rights safeguarded by Article 6 of the Convention, including the right of access to justice, were fully applicable to his attempt to act accordingly. Moreover, the applicant submitted that the civil actions to which the Government referred were not available to him in full because of his ex-wife's status as an MP. In particular, the applicant contended that where an action was brought under Articles 950 § 2 or 947 of the Civil Procedure Code, and the defaulter was, as in the present case, a serving MP, imprisonment could not be ordered.

## 2. *The Court's assessment*

### (a) **As to the applicability of Article 6 § 1 of the Convention**

27. With regard to the civil nature of the proceedings, the Court reiterates that the Convention does not confer any right, as such, to have

third parties prosecuted or sentenced for a criminal offence. To fall within the scope of the Convention such right must be indissociable from the victim's exercise of a right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right such as the right to a "good reputation" (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I).

28. The import of this case-law is that Article 6 § 1 of the Convention applies to proceedings involving civil-party complaints from the moment the complainant is joined as a civil party, unless he or she has waived the right to reparation in an unequivocal manner (see *Perez*, cited above, § 66).

29. In the present case the applicant applied for civil-party status, claiming a sum equivalent to ten euros, when he lodged an indictment with the prosecutor of the Athens Court of First Instance, based on Article 232A of the Criminal Code. Accordingly, the proceedings were of a civil nature as they had an economic aspect, on account of the sum – however symbolic – of ten euros which the applicant claimed in joining them as a civil party (see *Gorou v. Greece (no. 2)* [GC], no. 12686/03, §§ 24-26, 20 March 2009).

30. Moreover, as regards the Government's argument related to the decisive character of the proceedings for the right in question, the Court notes that they concerned the applicant's compensation for the non-pecuniary harm suffered because of the alleged breach by his ex-wife of decision no. 528/2005 and not the regulation of his access to his son. Thus, the applicant's right to be compensated for the alleged non-compliance with decision no. 528/2005 was directly at stake in the impugned proceedings (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, §§ 46-47, ECHR 2004-III).

31. Finally, the Court notes that although the applicant's indictment with the prosecutor of the Athens First Instance Court relied on the fact of the alleged non-compliance of the applicant's ex-wife with the previous interim order, it introduced an entirely separate claim seeking compensation for the non-pecuniary damage sustained. Consequently, it cannot be considered as "interim" in nature. Having regard to the foregoing, the Court considers that Article 6 § 1 applies in the present case and that the objections of the Government must be dismissed.

**(b) As to the objection of failure to exhaust domestic remedies**

32. The Court reiterates that it is well established in its case-law that an applicant must make normal use of those domestic remedies which are likely to be effective and sufficient. When a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see *Yaşa v. Turkey*, 2 September 1998, 1998-VI, § 71, and *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, § 84, ECHR 2008-...).

33. The Court notes that in the present case the applicant lodged an indictment with the prosecutor of the Athens Court of First Instance based on Article 232A of the Criminal Code seeking compensation for the alleged breach by M.A. of decision no. 528/2005. Thus, this indictment was capable

of remedying directly the impugned state of affairs, namely the non-pecuniary damage suffered by the applicant due to the alleged non-execution of decision no. 528/2005 (see *Wiktorko v. Poland*, no. 14612/02, § 34, 31 March 2009). In the circumstances of the case this constituted an adequate and effective remedy within the meaning of Article 35 of the Convention.

34. Further, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

35. The Government noted that the purpose of conferring immunity on members of parliament in respect of their votes and opinions was to ensure that the representatives of the people enjoyed the greatest possible freedom of expression in the exercise of their functions, beyond the limits imposed on ordinary citizens.

36. The Government submitted that the immunity in question, being attached to a function provided for in the Constitution, did not breach either the principle of the equality of citizens before the law or the prohibition of discrimination. Its purpose was neither to create a “privileged” class nor to allow parliamentarians to make arbitrary use of their privileges. On the contrary, it pursued the legitimate aim of allowing Parliament to debate any issue relevant to public life freely and openly without its members having to fear persecution or possible legal consequences.

37. Moreover, the Government asserted that the right of access to a court had not been restricted in the present case, as the domestic order secured the possibility of seeking compensation before the civil courts for material and non-pecuniary damage sustained on account of the alleged unlawful behaviour of M.A. The Government contended that a civil action was a remedy equivalent to joining a criminal action against M.A. as a civil party. Seeking civil redress only through criminal action would undermine the whole purpose of conferring immunity on members of parliament, namely the freedom and spontaneity of parliamentary debate. Further, the Government submitted that by decision no. 9599/2005 the Athens Court of First Instance varied the custody arrangements laid down in decision no. 528/2005 of the same court and made provision for a 1,000-euro fine in the event of a breach. Accordingly, the Government contended that in the present case the applicant could also have asked the Athens Court of First Instance to make provision for a fine and subsequently impose one on M.A. in the event of a breach of decision no. 528/2005.

38. In general, the Government affirmed that, even assuming that M.A.'s behaviour was not connected with the exercise of parliamentary functions in their strict sense, the restriction imposed on the applicant's right to a court should not automatically be considered as disproportionate to the aim pursued. The mere existence of other remedies capable of providing redress in respect of the applicant's complaints provided him with adequate means of effectively protecting his Convention rights.

39. The applicant noted that the present case raised an issue concerning parliamentary immunity which had already been resolved by the Court following its judgments in the cases of *Cordova v. Italy (no. 1)* (no. 40877/98, ECHR 2003-I) and *Tsalkitzis v. Greece* (no. 11801/04, 16 November 2006). The applicant agreed with the Government that parliamentary immunity under Greek law was capable of being compatible with the Convention on condition that, in exercising its discretion to waive immunity in individual cases, the Greek parliament correctly interpreted and applied the relevant constitutional provisions. The applicant submitted that the Greek parliament's refusal to give leave for proceedings to be brought against M.A. was part of a wider and consistent practice on the part of the parliament of using constitutional provisions on immunity to shield MPs from the reach of criminal law. The applicant provided a press survey, establishing that from 1974 to 2003 there had been eight hundred requests for such permission and only five of them had been granted. In this respect, and in the context of the present case, the applicant affirmed that the violation of his right of access to a court was all the more flagrant given the fact that M.A. was able to bring criminal proceedings against him.

## 2. *The Court's assessment*

### (a) **General principles**

40. The right of access to a court enshrined in Article 6 § 1 of the Convention is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State (see *Kart v. Turkey* [GC], no. 8917/05, § 79, 3 December 2009). In this respect, the Contracting States enjoy a certain margin of appreciation. It is not the Court's task to take the place of the relevant domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, *mutatis mutandis*, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII, and *Saez Maeso v. Spain*, no. 77837/01, § 22, 9 November 2004).

41. However, the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, such a limitation of the right of access to a court will not be

compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I, and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 98, ECHR 2001-V). The right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court.

42. The Court observes in this connection that when a State affords immunity to its members of parliament, the protection of fundamental rights may be affected. That does not mean, however, that parliamentary immunity can be regarded in principle as imposing a disproportionate restriction on the right of access to a court as embodied in Article 6 § 1 (see *Kart v. Turkey*, cited above, § 80). Just as the right of access to a court is an inherent part of the fair trial guarantee in that Article, so some restrictions on access must likewise be regarded as inherent, an example being those limitations generally accepted by the Contracting States as part of the doctrine of parliamentary immunity (see *A. v. the United Kingdom*, cited above, § 83, and, *mutatis mutandis*, *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 56, ECHR 2001-XI). The Court has already acknowledged that it is a long-standing practice for States generally to confer varying degrees of immunity on parliamentarians, with the aim of allowing free speech for representatives of the people and preventing partisan complaints from interfering with parliamentary functions (see *A. v. the United Kingdom*, cited above, §§ 75-77; *Cordova*, cited above, § 55, and *De Jorio v. Italy*, no. 73936/01, § 49, 3 June 2004). That being so, the creation of exceptions to that immunity, the application of which depended upon the individual facts of any particular case, would seriously undermine the legitimate aims pursued (see *A. v. the United Kingdom*, cited above, § 88).

43. It would be equally incompatible with the purpose and object of the Convention, however, if the Contracting States, by adopting one of the systems of parliamentary immunity commonly used, were thereby absolved from all responsibility under the Convention in relation to parliamentary activity. It should be borne in mind that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly so of the right of access to a court in view of the prominent place held in a democratic society by the right to a fair trial (see *Aït-Mouhoub v. France*, 28 October 1998, § 52, *Reports* 1998-VIII). It would not be consistent with the rule of law in a democratic society, or with the basic principle underlying Article 6 § 1, if a State could, without restraint or control by the Court, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities on categories of persons (see *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B).

44. Thus, where parliamentary immunity hinders the exercise of the right of access to justice, in determining whether or not a particular measure was proportionate the Court examines whether the impugned acts were connected with the exercise of parliamentary functions in their strict sense (see *Cordova (no. 1)*, cited above, § 62, and *De Jorio*, cited above, § 53). The Court reiterates here that the lack of any clear connection with parliamentary activity requires it to adopt a narrow interpretation of the concept of proportionality between the aim sought to be achieved and the means employed. This is particularly so where the restrictions on the right of access stem from the resolution of a political body (see *Kart v. Turkey*, cited above, § 83, and *Tsalkitzis v. Greece*, no. 11801/04, § 49, 16 November 2006). Moreover, the broader an immunity, the more compelling must be its justification (see *A. v. the United Kingdom*, cited above, § 78).

**(b) Application of the above principles in the instant case**

45. The Court notes that the Government's main argument focuses on the existence of legal means available to the applicant other than lodging a criminal indictment in order to seek compensation for the allegedly illegal behaviour of M.A. In the Government's view, the mere existence of the aforementioned remedies providing him with other means of redress meant that there was no breach of the core of the applicant's right of access to a court. The Court disagrees with this approach. As it has already observed on a number of occasions, when the domestic legal order provides an individual with a remedy, such as a criminal complaint with an application to join the proceedings as a civil party, the State has a duty to ensure that the person using it enjoys the fundamental guarantees of Article 6 (see *Anagnostopoulos v. Greece*, no. 54589/00, § 32, 3 April 2003). Thus, the Government's argument is not related to the merits of the applicant's complaint but to the issue of exhaustion of domestic remedies, a question that has already been addressed by the Court. Consequently, in the light of the particular circumstances of the case the Court must assess whether Parliament's refusal to grant leave in order to bring criminal proceedings against M.A. infringed the applicant's right of access to a court.

46. In this connection the Court notes that, if properly interpreted in the light of Article 6 § 1, Article 62 of the Greek Constitution entitles the Greek Parliament to refuse to grant leave for a prosecution only where the acts on which the prosecution is based are clearly connected with parliamentary activity. In the context of the present case, there was no conceivable link between M.A.'s behaviour which formed the basis of the proposed criminal proceedings and her parliamentary functions. Her alleged failure to comply with the contact arrangements ordered by the domestic court was entirely unrelated to the performance of her functions as a member of parliament and to the functioning and reputation of Parliament in general. Such behaviour is more consistent with a personal quarrel between an ex-couple with regard to the regulation of their contact with their child.

47. Moreover, the Court notes that no reasons were established by the Parliament's Ethics Committee as regards the grounds for not lifting M.A.'s immunity. In particular, the Committee made a general reference to Article 83 § 3 of the Parliament's Regulations adding that one of the conditions for the refusal to waive immunity for M.A. was met, without however specifying whether the offence for which the lifting of the immunity was sought was related to M.A.'s political activity, whether the prosecution was politically motivated or whether it was aimed at undermining the authority of Parliament. Consequently, the absence of any argument showing the reasoning of the Committee in question deprived the applicant even of the possibility of receiving any concrete information about the basis and the criteria on which Parliament had refused to waive M.A.'s immunity.

48. The Court lastly attaches some significance to the fact that the impugned approach of the Parliament has created an imbalance in treatment between the applicant and M.A., since the latter was able to bring criminal proceedings against the applicant on 31 March 2005, subsequently dismissed both at first instance and on appeal. Thus, the effect of the Greek Parliament's approach was that M.A. stayed completely outside the reach of the criminal justice system in relation to indictments lodged by the applicant, while remaining free to seek to prosecute him.

49. The Court therefore considers that in this case the decision that no further proceedings could be brought to secure the protection of the applicant's rights did not strike a fair balance between the requirements of the general interest of the community and the need to safeguard the fundamental rights of individuals.

50. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention. Moreover, having regard to the particular circumstances of the present case and to the reasoning which led it to find a violation of Article 6 § 1, the Court considers that it is not necessary also to examine the case under Article 14 of the Convention (see *Cordova v. Italy (no. 1)*, cited above, § 75).

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed to have sustained non-pecuniary damage on account of the frustration caused by his inability to join, as a civil party, the

criminal proceedings brought against his ex-wife for non-compliance with a court order and to obtain compensation for non-pecuniary damage. He requested the Court to award him such sum as it considered appropriate.

53. The Government submitted that a judgment finding that there had been a violation of the Convention would in itself constitute sufficient just satisfaction. Alternatively, the Government contended that any award for non-pecuniary damage should not exceed 3,000 euros (EUR).

54. The Court finds that the applicant sustained undeniable non-pecuniary damage. Taking into account the various relevant circumstances and making an assessment on an equitable basis in accordance with Article 41 of the Convention, it awards him EUR 12,000 in this respect, plus any tax that may be chargeable.

### **B. Costs and expenses**

55. The applicant also claimed 62,500 pounds sterling (GBP) (approximately EUR 73,026) for the costs and expenses incurred in the proceedings before the Court. He produced four invoices, for a total amount of GBP 12,500 (approximately EUR 14,603), in respect of the fees that he had already paid for his representation before the Court.

56. The Government stated that the legal fees for the proceedings before the Court were excessive and that a total sum not exceeding EUR 5,000 would be appropriate in respect of legal costs.

57. The Court notes that, according to its established case-law, 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).

In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,000 for the proceedings before this Court, plus any tax that may be chargeable to the applicant.

### **C. Default interest**

58. 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. *Declares* by a majority the application admissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* unanimously that there is no need to examine separately the complaint under Article 14 of the Convention;
4. *Holds* by five votes to two
  - (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 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 7,000 (seven thousand euros), in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
  - (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;
5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Nina Vajić  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Flogaitis is annexed to this judgment.

N.A.V.  
S.N.

## DISSENTING OPINION OF JUDGE FLOGAITIS

I dissent from the majority in the present case. I understand that important precedents have been decided in cases where civil party actions are brought in criminal proceedings before the courts. It is my view, however, that peculiarities specific to Greek criminal proceedings prevent me from accepting that the impugned proceedings are civil in nature and, accordingly, from concluding that Article 6 § 1 is applicable.

According to Greek criminal law, a criminal trial is of an entirely public character: it is the public prosecutor who decides whom to arrest and charges are brought on behalf of the public, and it is the public prosecutor who is responsible for bringing a case before the Criminal Court against an individual suspected of breaking the law. The criminal trial is therefore between the representative of the public and the defendant.

Where the “victim” of the crime wishes to intervene in the proceedings, there is only one institution which can allow him to participate officially in the criminal trial: **a civil action**.

The plaintiff claiming damages joins the criminal trial on the pretext of seeking compensation for the damage suffered. In actual fact, he seeks to establish proof of the defendant's guilt by presenting himself as the person who has suffered as a result of the crime and who seeks to reveal the truth. In other words, by asking the criminal court to award him compensation for the damage suffered, the plaintiff actually requires his suffering to be recognised by the public authorities and justice to be granted in his favour. This will happen only if the defendant is found guilty of the crime by the court's verdict. Moreover, the satisfaction of the plaintiff's claims arising from the crime is an element of the public function of the criminal penalty, since not only does it provide redress for the plaintiff but it is also important for the reparation of damage in society<sup>1</sup>.

The participation of the plaintiff claiming damages in the criminal trial also contributes to achieving a better diagnosis of the defendant's personality and greater clarification of both the psychological circumstances under which the crime was committed and its consequences. If these factors are considered, the level of the defendant's responsibility and the suitable penalty can be better assessed by the domestic courts<sup>2</sup>. The plaintiff's presence is also indispensable for ensuring that the courts or the public authorities pursue the criminal proceedings expeditiously<sup>3</sup>.

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<sup>1</sup> A. Psarouda-Mpenaki, Civil party in criminal proceedings (in Greek), Sakkoulas, 1982, pp. 13-37.

<sup>2</sup> N. Androulakis, “Fundamental elements of criminal procedure” (in Greek), Sakkoulas, 1994, pp.70.

<sup>3</sup> A. Karras, Law of Criminal Procedure (in Greek), 3rd edition, Sakkoulas, 2007, pp. 429-52.

The argument that the plaintiff's aim in the criminal proceedings is to secure the defendant's criminal conviction is also supported by the fact that a) the amount of money claimed by the plaintiff for compensation is very low, namely, 10 or 20 euros, and he usually reserves the right to bring the case before the civil courts for higher compensation, and<sup>4</sup> b) the criminal proceedings allow the victim to take part in the criminal trial and endeavour to secure the conviction of the defendant without claiming civil damages. Specifically, this is possible in cases where (i) the person responsible for paying the damages occasioned by the crime is a third party and not the defendant, (ii) the public authorities bring a civil action for a crime relating to taxes and customs, (iii) the prosecutor appeals against the first-instance court's ruling, and c) the proceedings instituted to join the criminal trial as a civil party are facilitated since this can be done orally in the course of the court hearings, a lawyer can be appointed, the civil party is summoned to appear before the court and he has the right to a hearing.

The role of the civil party in criminal proceedings as a “private” prosecutor is also borne out by the fact that if in such a case the defendant offers the plaintiff compensation in the entire sum of money he claims before the beginning of the criminal trial, the plaintiff can refuse this offer and insist on participating in the criminal proceedings in order to assist the court in securing a conviction. The same applies when the civil party submits their claim for compensation publicly after the opening of the court's hearing, but the plaintiff maintains his right to be part of the criminal trial as a civil party (see Court of Cassation, judgment no. 1/1997, plenary)<sup>5</sup>.

Finally, the civil party, if he truly wants to be compensated, will submit his case to the civil courts and it is before those courts that the civil right will be satisfied. In fact the entirely criminal nature of the criminal proceedings is also proven by the fact that the civil courts, when deciding the same case, are not bound at law by the findings of the criminal court and the civil proceedings are independent.

For these reasons, I conclude that the present case should have been rejected as inadmissible.

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<sup>4</sup> I. Karagiannakou, *Criminal Procedure* (in Greek), 3rd edition, 2005; A. Papadamakis, *Criminal Procedure* (in Greek), Sakkoulas, 2008, pp. 158-193; A. Psarouda-Mpenaki, *supra*.

<sup>5</sup> A. Papadamakis, *supra*.