

Recent developments in Greece

Recent ECHR Judgments against Greece (released on 31/8/2008) brought to surface important issues of general importance, that “haunt” the European criminal system.

The Judgments clearly indicate a major weakness in how that system works:

- Human Rights and the principle of fair trial are violated in the course of criminal trials.
- The length of the proceedings is excessive and exhaustive.
- Decisions rely on formalistic approaches, failing to examine the merits of the case.
- Judges use impermissible procedural ploys, in order not to compensate unfairly detained victims.

Kabli v. Greece (no 28606/05)

The applicant, Skender Kabli, is an Albanian national, who was born in 1970 and lives on the island of Euboea. He was arrested and remanded in custody in May 2003 on suspicion of murder and unlawful possession of weapons.

In October 2004 he was acquitted.

On 14 January 2005, the Athens Court of Appeal dismissed a claim in which the applicant sought compensation for his pre-trial detention on the ground that, having failed to prove his innocence the applicant had “deliberately made himself responsible for his own detention”.

This is a **gross contravention** of the presumption of innocence.

It is widely accepted that the onus of proof lies on the prosecution. If the prosecution fails to prove guilt, then the defendant has no obligation to prove his innocence.

The decision not only violates this principle, but also punishes the defendant for that.

The reasoning of the internal decision is a jurisprudential construction, “invented” to block the claims of the unfairly detained persons.

Of course, ECHR relying on article 6 & 2 (right to a fair trial) confirmed that the reasons the Athens Court of Appeal gave for dismissing the compensation claim are incompatible with fair trial principles.

Charalambidis v. Greece (no 4723/2007)

The applicant is a Greek national, who was born in 1965 and lives in Thessaloniki (Greece).

Mr Charalambidis is a private detective.

In August 1998 he was charged with telephone tapping.

He was found guilty and sentenced on appeal to seven months imprisonment, suspended. He lodged an appeal on points of law, which was dismissed by the Court of Cassation in July 2006.

The applicant, relying on Article 6 & 1 (right to fair trial within a reasonable time), complained successfully that the length of the proceedings was excessive.

The delays in the administration of justice are even longer.

For a final decision, it takes about 7-8 years in misdemeanors and more in felonies.

But “justice delayed is justice denied”.

And “justice denied anywhere diminishes justice everywhere” (Martin Luther King Jr).

Louli v. Greece (no 28606/05)

The applicant, Dionysia Louli, is a Greek national who was born in 1925 and lives in Athens.

The case concerns a complaint she lodged on her own behalf and as the legal representative of her husband, who was senile, alleging that money had been fraudulently removed from their joint bank account. When she lodged an appeal after the death of her husband she mentioned that she was acting on her own behalf and as his sole heir. However, the Court of Cassation pointed out that this did not tally with the information given in the document prepared by its registrar and refused her leave to appeal in that capacity.

The applicant's claim was that the wrong information in the appeal report is due to a mistake of the Registrar at the time the appeal was lodged. Thus, the Supreme Court, declaring the appeal inadmissible, punished the applicant for a procedural mistake for which she could not be held liable.

Besides, the Memorandum, where her capacity as heir is mentioned in detail was attached to the appeal report and was in any case part of the case file held by the Supreme Court.

Thus, the Supreme Court was in a position to easily read the text of the Memorandum and to certify the accuracy of the fact.

The Court, relying on Article 6 & 1 (right to a fair trial), ruled that the Court of Cassation, by its excessive formalism, had infringed her right of access to a court.

The message of general importance, deriving from this Judgment, is that European criminal court's primary goal is to examine the merits of the case. Formalistic approaches constitute limitations that fail to pursue the aim of legal safety and justice.

The finding of inadmissibility due to having omitted to mention certain information and facts of the case, which however could be construed from the case file, IS NOT compatible with the requirements of Article 6 Par. 1 regarding the right of access to a court.

A typical or procedural omission cannot lead to the losing of the right to remedy.