

OPINION

# A black spot in the Greek judiciary



**Miranda Xafa**

02.07.2023, ekathimerini.com

After twelve years of suffering in the Greek courts, the former President of the Hellenic Statistical Authority (ELSTAT) Andreas Georgiou was vindicated in March by the European Court of Human Rights (ECHR), which condemned Greece for violating his right to a fair trial (Article 6 of the European Convention on Human Rights).

The case concerns the conviction of Mr Georgiou for breach of duty because he did not seek the approval of the ELSTAT board before communicating to Eurostat the revised fiscal

data for the period 2006-9 in November 2010. Although he was unanimously acquitted at the Court of First Instance, in 2017 he was convicted by the Court of Appeal to the maximum sentence of two years imprisonment suspended for three years. His conviction contravenes the Code of Good Practice for European Statistics (COP, Principle 1.4), which expressly stipulates that the head of the statistical authority has “sole responsibility” for decisions regarding statistical data, which obviously are not subject to a vote by any board.

Mr Georgiou filed an appeal against his conviction, asking the Supreme Court to send a preliminary question to the competent Court of Justice of the European Union (CJEU) regarding the correct interpretation of Principle 1.4 of the COP, but his appeal was rejected without any justification, as the ECHR reports. The tacit refusal of the Greek judiciary to submit a preliminary, pre-trial question and the unconvincing answers of the State Legal Council, when asked by the ECHR whether Mr Georgiou received a fair trial, led to the acquittal of Mr Georgiou and the conviction of Greece. The ECHR’s unanimous decision expressly refers to the obligation of the Supreme Court to review its decision to reject Mr Georgiou’s application for annulment of his conviction.

The State Legal Council claimed that the Supreme Court rejected the request for a preliminary ruling because it had no doubts about the correct interpretation of Principle 1.4, and because the Supreme Court would have had the final say on

the matter anyway, whatever the CJEU's response. But pre-trial questions are necessary for the incorporation and application of Community law in national law. Greece would certainly not have been a champion in ECHR convictions in recent years if it had more often requested the assistance of the CJEU: In the five-year period 2018-22, European countries with a population similar to that of Greece submitted many more pre-trial questions to the CJEU: Belgium 180, Portugal 159, Hungary 104, Greece 16, according to ECHR data.

The Strasbourg verdict was a resounding clarion call for the rule of law in our country. While the Greek judiciary is criticized mainly for its inability to decide within a reasonable period of time, in this specific case Greece was condemned for another pathology: the erosion of judicial independence. As Ioanna Mandrou wrote in "K" ("When Justice becomes political" 21/3/23), the condemnation of Greece "exposes the Greek Judiciary, not only because it did not provide a fair trial to a Greek citizen, but because it actively participated in his targeting, with repeated prosecutions, on which the political narrative that the 2009 deficit manipulation triggered the subsequent adjustment program was built upon.

The conviction for the Georgiou case is in essence a condemnation for the involvement of the Greek judiciary in political games, and indeed at the highest level of the Supreme Court which moved not once but many times to bring about the conviction of Georgiou. It is no coincidence that

while the lower courts acquitted him, the Attorney General's Office appealed. The Supreme Court attempted at least three times to annul the acquittal of Andreas Georgiou by lower courts. In the Georgiou case, the European Court effectively condemned the involvement of the Greek judiciary in the field of politics".

Despite the fact that Mr Georgiou restored the credibility of "Greek statistics", he is being prosecuted as a scapegoat by the Greek judiciary with politically motivated charges that lack credibility. After he was definitively acquitted of the charge of allegedly "inflating" the deficit, brought upon him by New Democracy circles, and was vindicated by the ECHR in the "breach of duty" case, he is still facing his conviction for insulting Mr Nikolaos Stromblos, director of National Accounts of ELSTAT (formerly ESYE) during the "Greek statistics" period 2006-9 and key prosecution witness in the case of "inflating" the deficit.

ADVERTISING

In an effort to defend the corrected fiscal figures, as required by the COP (Principle 1.7), in 2014 Mr Georgiou raised the reasonable question of why he was being prosecuted for data that Eurostat had fully accepted, while the Greek judiciary never dealt with the falsified data submitted by ESYE previously. Mr Strombolos sued for defamation and Mr Georgiou was ultimately convicted of "simple" defamation – an

offense under Greek law that punishes those who damage the plaintiff's reputation by telling the truth.

In 2021, the Court of Appeal upheld the first instance decision, with the result that Mr Georgiou is threatened with confiscation of his property if he does not pay a large monetary compensation to the plaintiff. In a positive development, the Supreme Court recently accepted his request to overturn his conviction. But in order to end the lawsuit process and to be vindicated, Mr Georgiou has to request a retrial. He stated that he will not stop until his final vindication.

After Greece's recent conviction by the ECHR, one would imagine that the Greek government and its legal representatives, who defended the Greek judiciary in the "breach of duty" case, got the message. But on 8 June 2023 the government filed an application for a review of the case by the ECHR plenary, rejecting the decision that Mr Georgiou did not have a fair trial in Greece. The State Legal Council obviously knows it has no chance of winning since it has not submitted any new arguments. Nevertheless, it decided to waste time and resources by exhausting all legal remedies in order to protect itself from possible criticism, and possibly also to pre-empt conflict within the ruling party between the current and previous leadership. Contrary to what one would expect from a reformist government, the pathology that led to the "Greek statistics" continues. The populism of the easy solutions offered by former prime ministers with

“Zappeio I, II, III” and the cancellation of the memorandums with Greece’s creditors “with one law and one article” lives on! Thus, the prospect of repeating the trial that would allow Mr Georgiou to be fully vindicated is postponed indefinitely.

Mr Mitsotakis needs to change this sad picture, which damages Greece’s reputation as a country upholding the rule of law, in his second term as prime minister. The problem is not only the delay in the administration of justice that he often points out. The performance of judges must be assessed not only in terms of the speed of their decisions but also in terms of their independence and objectivity.

---

Miranda Xafa is a member of the Academic Board of the Center for Liberal Studies (KEFIM) and author of the book “Public Debt” in the Short Introductions series, Papadopoulos Publications.