

## SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES

COMMITTEE  
OF MINISTERS  
COMITÉ  
DES MINISTRES



Contact: Clare Ovey  
Tel: 03 88 41 36 45

Date: 25/02/2016

**DH-DD(2016)210**

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1250 meeting (8-10 March 2016) (DH)

Item reference: Revised action report (18/02/2016)

Communication from Greece concerning the case of Tsalkitzis against Greece (Application No. 11801/04)

\* \* \* \* \*

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1250 réunion (8-10 mars 2016) (DH)

Référence du point : Bilan d'action révisé

Communication de la Grèce concernant l'affaire Tsalkitzis contre Grèce (Requête n° 11801/04)  
(**anglais uniquement**)

---

**DG 1**

**18 FEB. 2016**

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**UPDATED ACTION REPORT**

**on the execution of judgments of the European Court of Human Rights**

**in the cases of:**

- 1. Tsalkitzis (appl. no 11801/04), judgment of 16/11/2006, final on 26/3/2007,**
- 2. Syngelidis (appl. no 24895/07), judgment of 11/2/2010, final on 28/6/2010**

**TABLE OF CONTENTS**

I. DESCRIPTION OF CASES.....	1
A. Case of Tsalkitzis.....	1
B. Case of Syngelidis.....	2
II. INDIVIDUAL MEASURES.....	2
III. GENERAL MEASURES.....	3
A. CHANGES IN REGULATION.....	3
B. CHANGES IN PARLIAMENTARY PRACTICE.....	5
IV. CONCLUSIONS.....	7
V. ANNEXES.....	8

**I. DESCRIPTION OF CASES.**

**A. Case of Tsalkitzis**

The case concerns the violation of the applicant's right of access to court in that the Parliament (in 2002) and the Speaker (in 2004) rejected a request by the Prosecutor before the Supreme Court to lift the parliamentary immunity of a member of parliament (herein after referred to in general as "MP"), elected in 2000, against whom the applicant, a property developer, had lodged a complaint for blackmail, abuse of office and subornation, offences allegedly committed in 1997 when the parliamentarian had been mayor (violation of Article 6§1).

The European Court of Human Rights (herein after the "Court") noted that in such cases the lack of a clear link with a parliamentary activity calls for a narrow interpretation of the notion of proportionality between the aim pursued and the means employed, especially when the restrictions of the right of access to a court emanate from a decision of a political organ (§ 49 of judgment). Besides, the Court considered that the suspension of criminal proceedings against a member of parliament during their parliamentary mandate would result in a substantial amount of time elapsing between the commission of the acts complained of and the opening of criminal

proceedings that would render the latter uncertain, particularly regarding evidence (§50 of judgment).

#### **B. Case of Syngelidis**

A similar violation to the applicant's right of access to a court occurred in the case of Syngelidis. On 20 October 2005 the applicant lodged a criminal action before the prosecutor of the Athens Court of First Instance based on Article 232A of the Penal Code.

The Court noted 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 the MP'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.

The Court lastly attached some significance to the fact that the impugned approach of the Parliament has created an imbalance in treatment between the applicant and the MP, since the latter was able to bring criminal proceedings against the applicant, subsequently dismissed both at first instance and on appeal. Thus, the effect of the Greek Parliament's approach was that the MP remains 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 (§ 46 – 48 of judgment).

The case of Syngelidis must be jointly examined with the case of Tsalkitzis due to their similarity (analogous factual basis, issues raised, violations found and finally measures to be adopted under the obligation concerning the execution of judgments).

## **II. INDIVIDUAL MEASURES**

The Court awarded the applicants of both cases just satisfaction in respect of the non pecuniary damage sustained, taking into account the various relevant circumstances and making an assessment on an equitable base, as well as costs and

expenses under article 41 of the Convention. No other individual measure was considered necessary.

- **Details of just satisfaction:**

- **in Tsalkitzis case:**

Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
-	5,000 EUR	5,700 EUR	10,700 EUR
Paid on 4/7/2007			

- **in Syngelidis case**

Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
-	12,000 EUR	7,000 EUR	19,000 EUR
Paid on 4/10/2010			

### **III. GENERAL MEASURES**

#### **A. CHANGES IN REGULATION**

According to Article 62 § 1 of the Constitution, during the parliamentary term, members of parliament may not be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by Parliament. Pursuant to Article 83 of Parliament's Regulations, requests for leave to prosecute a member of parliament are first examined by the Parliament's professional ethics committee which should take into account, *inter alia*, whether the act complained of is linked to a political activity of the member of parliament (see §§16-17 of judgment, see Cordova case, judgment of 30/01/03, final on 30/04/03; De Jorio case, judgment of 03/06/04, final on 10/11/04).

On 16.7.2010, meaning just twenty days after the Court's judgment in the case of Syngelidis became final, significant alterations in the relevant provisions of the

Regulation of Parliament took place. According to a decision taken on 16.7.2010 (published in the official gazette No 139A/10.8.2010) by Parliament's plenary session, article 83 par. 3 of its Regulation reads as follows: "*The Committee, having heard the MP in respect of whom the lifting of immunity is sought, if he or she wishes to be heard and in any case the Chairman of the Committee three days prior to its session invites him/her to do so, shall examine if the action for which the lifting of the immunity is sought is linked with the political or parliamentary activity of the MP or the prosecution, indictment or accusation is politically motivated and otherwise proposes the lifting of the immunity*".

These provisions marked a significant progress in the process of the lifting of parliamentary immunity<sup>1</sup>. This is evident by the deletion of relevant regulatory preconditions under which the parliamentary Committee examined the relevant request such as whether the prosecution results to *undermining the authority of Parliament or of the Member of Parliament, or at obstructing, to a significant extent, the exercise of their functions, or at influencing the operation of Parliament or of the*

---

<sup>1</sup> Article 83 of the Regulations of Parliament provided at the time of the issuance of the Court's judgments in the above mentioned group of cases (i.e. before 16.7.2010) read 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...".

*parliamentary group of which the MP is a member.* After the aforementioned alterations the Committee's competence is relatively restricted. It contains only the examination of whether the MP's action for which the lifting of immunity is sought is strictly connected with the political or parliamentary activity of the MP or whether the prosecution or indictment is politically motivated. These regulatory alterations satisfied aspirations already declared in the explanatory report containing the proposals set forth by the Speaker of Parliament about reforms of the parliamentary immunity status<sup>2</sup>.

## **B. CHANGES IN PARLIAMENTARY PRACTICE**

The Court's judgments have been notified in Greek translation to the Speaker of Parliament for diffusion to parliamentary committees, as well as to all MPs. The judgments have also been sent to the Ministry of Justice and subsequently to the President and the Prosecutor of the Supreme Court for diffusion to judicial authorities. The translation in Greek of such judgments is also publicly accessible at the website of the Legal Council of the State ([www.nsk.gov.gr](http://www.nsk.gov.gr)).

It derives from the Court's judgments that the violation found does not originate from the legal texts relating to the immunity of members of Parliament, but rather to the way in which they were applied in the cases at issue. This being the case, the aforementioned publication and dissemination of the judgments constitute sufficient measure of execution.

---

<sup>2</sup> Under this head the relevant chapter reads as follows: *"Parliamentary immunity, considered to work as a guarantee for parliamentary regime, has to be restricted only to reasons for which it has been introduced. MP's should be protected when exercising their duties, but after all every activity that has no connection with parliamentary or political action should not hide under parliamentary immunity. This is why the reasons behind the lifting of parliamentary immunity are mainly restricted to those concerning the political activity of the MP in accordance to its motives. It is thus excluded from now on to have applications for the lifting of immunity rejected for reasons which were already foreseen until today by the Regulation of Parliament, such as activities undermining the authority of Parliament or of the MP, or at obstructing, to a significant extent, the exercise of their functions. Also, decisions of the Parliament's Ethics Committee of article 43A, have to be justified in order to obtain a transparent decision in every case for the lifting or not of parliamentary immunity"* (Document with ref no 1300.1/217/ 20.4.2011, of the Secretary Section of the Hellenic Parliament – Annex 1).

The substantial change in parliamentary practice after the issuance of the Court's judgments (in the Syngelidis case the judgment became final on 28.6.2010) and the alterations of Parliament's Regulation (on 10.8.2010) is already well evident. During the first parliamentary session (i.e. a period running from 4.10.2009 until 30.9.2010) actually mostly before the alterations in Parliament's Regulation, 20 requests for the lifting of parliamentary immunity were submitted so that leave of Parliament could be sought under Article 62 of the Greek Constitution. The Parliament's Ethic Committee decided that the relevant requests should be rejected in 17 cases, while in only three cases the Plenary Session decided to grant leave for the lifting of parliamentary immunity.

These figures were substantially altered during the second and third parliamentary session of Period XIII of Parliament (i.e. a period running from 1.10.2010 until 30.11.2011). In that period, 22 requests for lifting parliamentary immunity were submitted. 18 cases were heard before Parliament sitting in Plenary Session. In 12 cases leave was granted to lift parliamentary immunity. These cases concerned offences committed at the time when MP's were elected functioning under their political identity as members of the legislative body or as Prefects or Mayors and offences such as defamation, false without oath testimony, breach of duty, disobedience, pollution of the environment, bodily harm due to negligence, infidelity, arson due to negligence, false indictment and breach of law protecting literary property. That leave was refused only in six cases strictly related to the MP's political activity (document with ref. no 2595/30.11.2011 of the Secretary Section of the Hellenic Parliament - Annex 2).

In addition, during the consecutive period from 1.12.2011 since today, 147 requests were totally submitted. These cases concerned various offences provided under the Penal Code. In 84 cases leave was granted to lift parliamentary immunity. That leave was refused in 48 cases, while 9 cases have been returned on the grounds that the concerned MPs have not been re-elected, 2 cases have been transferred to the ministers' group of requests, 2 cases have been returned to the relevant authorities and then they have been re-submitted and 1 case has been returned upon the prosecutor's request. One case is still pending to be heard (document with ref no 24/22.12.2015 of the Secretary Section of the Hellenic Parliament - Annex 3). The aforementioned 48 cases -where leave was refused- concerned offences strictly related to MP's political activities and/or the relevant criminal complaints were considered to conceal political

motives. More specifically, 19 of them concerned offenses such as defamation, slander and false indictment, among which 11 against the same 3 MPs, while the remaining 8 against different MPs; 10 of them concerned breach of duty, embezzlement, passive corruption and incorrect asset declaration; 5 of them concerned offences regarding employers' contributions and obligations towards employees, social security funds and tax authorities; 4 of them concerned bank checks without credit against the same MP; 3 of them concerned illegal violence and physical injury due to negligence; 3 of them concerned occupation of land and/or of public domain and/or TV broadcasting activities without permission; finally, 4 of them concerned road traffic offences and obstruction of public transport.

#### **IV. CONCLUSIONS**

The Government consider that no other individual and/or general measure is necessary in order to prevent similar violations of article 6 § 1 of the Convention, in respect of the right of access to court against members of Parliament, and that, consequently, Greece has complied with its obligations provided under article 46 § 1 of the ECHR and cases should be closed.

## **V. ANNEXES**

1. Document AΠ 1300.1/217/ 20.4.2011 of the Secretary General of the Hellenic Parliament,
2. Document AΠ 2595/30.11.2011 of the Secretariat of the Directorate of Legislative Work of the Hellenic Parliament,
3. Document with ref no 24/22.12.2015 of the Directorate of Legislative Work of the Hellenic Parliament.