

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: 15/12/2015

DH-DD(2015)1351

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 (30/11/2015)

Communication from Greece concerning the cases of Zouboulidis (No. 2) and Varnima Corporation International S.A. against Greece (Applications No. 36963/06, 48906/06)

* * * * *

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 les affaires Zouboulidis (n° 2) et Varnima Corporation International S.A. contre Grèce (Requêtes n° 36963/06, 48906/06) (**anglais uniquement**)

Zouboulidis v. Greece (no. 36963/06), judgment of 25/06/2009, final on 06/11/2009 **and**

VarnimaCorporation International S.A (no. 48906/06), judgment of 28/05/2009, final on 06/11/2009.

DG 1

30 NOV. 2015

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

I. Cases description.

Both cases concern violations of the Convention caused by the duration of limitation period of claims of individuals against the State provided in domestic law.

In the case Zouboulidis v. Greece, the applicant, a state employee under a private law contract brought an action against the state seeking the payment of a supplement of his expatriate allowance. His action was rejected as statute barred. According to the law regulating the matter, all claims of civil servants, as well as of the personnel employed by the state under private law contracts, are subject to a limitation period of two years from the date the payment had been due. The state's claims against individuals are subject to much longer limitation periods. The applicant argued that the privilege accorded to the state resulting from the two-year limitation period infringed his right to peaceful enjoyment of his possessions. He also challenged the rule that the date from which default interest was charged on all state debts was the day on which notice of the action was served on the state, while claims against individuals are charged with interest from the day the debt should have been paid.

The Court noted that the mere interest of the state's cash flow could not in itself be treated as public interest and that the shorter limitation period of claims against the state constituted unjustified preferential treatment to the state which amounted to violation of Art. 1 of the 1st Protocol. Furthermore the Court held that calculating the default interest on the sums owed by the state from the date of service of an action, whereas the starting point of interest charging for individuals is the date when the debt should have been paid also amounted to violation of Art. 1 of the Convention.

In the case Varnima Corporation International S.Av. Greece, the applicant company, which had entered into a contract with the state for the importation of petroleum products, was sued by the state for damages. The company then lodged a counterclaim for damages on the grounds that the state had not fully performed the contract. After joining the two actions the competent domestic court rejected the applicant company's action as time-barred on the basis of a law providing one year limitation period of claims against the state, while it upheld the state's claims which were subject to a much longer limitation period.

The Court held that the application of different limitation periods had placed the applicant company in a position of substantial disadvantage compared to the State for the submission of its claim. As a result of the imposition on the applicant of a limitation period much shorter than the one granted to the opposite party, its claims had been dismissed by the domestic courts, which contravened the principle of the equality of arms.

II. Payment of just satisfaction and individual measures.

In the case *Zouboulidis v. Greece*, the Court allocated to the applicant the total amount of 35,000 € for pecuniary damage, which was paid to him on 02.01.2010.

In the case *Varnima Corporation International S.A. v. Greece* the Court allocated to the applicant company 6,000€ for non-pecuniary damage and 6,000€ for costs and expenses. The just satisfaction was paid in conditions accepted by the applicant.

No further individual measures are considered necessary.

III. General measures.

In the case *Zouboulidis v. Greece* the Court took note of the following:

1. that the preferential treatment of the state as regards the limitation period of its claims had been reaffirmed by the case-law of the Court of Cassation but not by the case-law of the Council of State (Supreme Administrative Court);
2. that the mere interest of the State's cash flow or the concern to settle the State's debts promptly could not in themselves be treated as a public or general interest justifying interference with individual rights;
3. that no specific additional evidence had been provided to prove that there had been sufficient public-interest grounds to justify applying the two-year limitation period to the applicant's claims against the state. The same was true with regard to the starting-point fixed by the domestic courts for calculating the default interest on the sums payable by the state which was different to the one set for individuals.

In the case *Varnima Corporation International S.A. v. Greece* the Court took note of the following:

The application to the state of a twenty-year limitation period for its claims, whereas the other party to the proceedings was granted one year limitation period did not appear to be justified by a need to ensure the efficient management of public finance. The Court added as in the *Zouboulidis v. Greece* case that no specific additional

evidence had been provided as to the impact on the financial stability of the state if the one year limitation period for the state's claims was not applied.

Change of the Court's jurisprudence as regards the questions at issue.

By its judgment no 9/2009 the Special Highest Court of Greece settled the conflict between the Council of State and the Court of Cassation as regards the compatibility with the Greek Constitution of the law establishing two years limitation period for the claims of employees of the state against the state. The Special Highest Court held that the law was compatible with the Greek Constitution.

In a later judgment, in **the case *Giavi v. Greece (no 25816/09)***, the applicant raised the same complaint as in the case *Zouboulidis v. Greece*; the Court concluded that the two years limitation period for the claims of the employees of the public entities was justified on public interest grounds and did not break the balance between the protection of property rights and the public interest (§ 53 of the decision in the *Giavi v. Greece* case).

The matter at issue in the *Giavi v. Greece* case and in the *Zouboulidis v. Greece* case was the same, namely the compatibility with the Convention and its Protocols of applying shorter limitation periods for the claims of the state (or public entities) employees against the state than the limitation periods set for claims of employees against private employers or for the state's claims against others. In the *Giavi v. Greece* case the Court proceeded in a new interpretation of the Convention on the basis of the clarification of the matter by the Special Highest Court and the evidence provided by the government in support of its arguments which were the same as in the *Zouboulidis v. Greece* case (§ 47 of the decision in the *Giavi v. Greece* case). The Court's reasoning in the *Giavi v. Greece* judgment applies also in the issue of the starting point of calculating default interest and in the *Varnima v. Greece* case for the following reasons:

In the *Zouboulidis* judgment, as well as in the *Meidanis* judgment (No 33977/06), the Court examined the compliance with the Convention of the 'procedural privileges' of the state (or entities funded by the state) against individuals such as shorter limitation periods set for the state (*Zouboulidis*) and lower default interest rate set for the state (*Meidanis*). In both cases the Court noted that: a) while privileges or immunities might be necessary for an administrative authority where it discharged duties governed by public law, the mere fact of belonging to the state structure was not sufficient in itself to justify the application of privileges in all circumstances; such privileges had to be necessary for the proper performance of public duties and b) that the mere interest of the state's cash flow could not in itself be regarded as a public or general interest justifying interference with the principle of equality of arms.

In the subsequent judgments *Giavi* (shorter limitation periods for the state), *Viaropoulou* [No 570/11(lower default interest rate for the state)] and in the admissibility decision *Grigoriou-Kanari* [No 39631/139 (lower default interest rate for the state)] the Court held that the said privileges of the state were in compliance with the Convention on the following grounds: a) the state [or entities funded by the state (*Giavi* § 40)] acted by exercising public power in the general interest (*Viaropoulou* § 50) and b) the difference of the default rate between the debts of the state and the debts of the individuals was not grossly disproportionate. The Court in drawing its conclusions took note of: a) the reasoning of the domestic Special Highest Court according which the concern for the financial stability of the State justified the procedural privileges of the state (*Viaropoulou* § 53, *Grigoriou-Kanari* § 38) and b) the state of the public finances of Greece from 2003 to 2001 (*Viaropoulou* §§ 34-35). It should be noted that the *ratio* of the above judgments, which found that the state's privileges as regards the difference in the limitation periods between the claims of the state and the claims of the individuals, as well as the difference between the default interest rate set for the state and the default interest rate set for the individuals applies for the same reasons on the issue of the difference of the starting point of the default interest between the state and the individuals.

It should be noted as well that the above judgment and decisions of the ECtHR have been translated in Greek and the Greek translations are published to the State's Legal Council web site (nsk.gov.gr) and therefore they are accessible in public. The Court's holdings have also been broadly disseminated and have been further the subject of seminars and publications in juristic magazines.

In the light of the Court's new conclusion as regards the compatibility with the Convention and its Protocols of the shorter limitation periods set for the state compared to those set for individuals, as well as the compatibility with the Convention of the difference of the default interest rate between the state and the individuals and taking into account that *the ratio* of the above judgments applies to the issue of the starting point of the default interest of claims against the state compared to the starting point set for the default interest of the state's claims, it is deemed that no further general measures are necessary regarding the execution of the judgements in the *Zouboulidis v. Greece* and in the *Varnima Corporation International S.A. v. Greece* cases.

IV. Conclusion

In the light of the above the Greek Government considers that the supervision of the Committee of Ministers on the execution of theses judgments can be concluded.