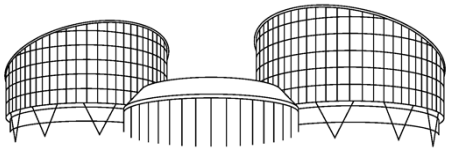

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BAKOYANNI v. GREECE

(Application no. 31012/19)

JUDGMENT

Art 6 § 1 (criminal) • Parliament's refusal to lift immunity of a minister from criminal prosecution for alleged defamation of Member of Parliament • Specific remedy sought by applicant to protect her civil right to reputation through newspaper publication of any future judgment in the event of minister's conviction only possible in context of criminal proceedings • Lack of any clear connection between minister's alleged conduct and his parliamentary or ministerial activities • Very essence of right of access to court impaired

STRASBOURG

20 December 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bakoyanni v. Greece,

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

Marko Bošnjak*, President*,
Péter Paczolay,
Alena Poláčková,
Lətif Hüseynov,
Gilberto Felici,
Erik Wennerström*, judges*,
Michail-Konstantinos Stathopoulos*, ad hoc judge*,
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 31012/19) 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, Ms Theodora Bakoyanni ("the applicant"), on 3 June 2019;

the decision to give notice of the application to the Greek Government ("the Government");

the parties' observations;

Having deliberated in private on 29 November and 6 December 2022,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns the refusal of the Greek Parliament to lift immunity of P.K. (who was, at the relevant time, the Minister of Defence) for defamation allegedly committed against the applicant, a Member of Parliament.

THE FACTS

2. The applicant was born in 1954 and lives in Athens. She was initially represented by Mr I. Ktistakis. Since 25 February 2021, she has been represented by Mr C. Papadimitriou, a lawyer practising in Athens.

3. The Government were represented by their Agent's delegates, Ms S. Charitaki, Legal Counsellor at the State Legal Council and Ms S. Papaioannou, Senior Advisor at the State Legal Council.

4. The facts of the case may be summarised as follows.

5. The applicant is a member of the Greek Parliament.

6. At the time of the events in question, two Greek military officers had been arrested and were being detained in Turkey on espionage-related charges.

7. On an unspecified date in 2018 the applicant was invited to the oath-taking inauguration ceremony of the Turkish President, which was to take place on 9 July 2018. She accepted the invitation, stating the reasons for her acceptance in a tweet posted on 7 July 2018:

> "I will be present at the oath-taking ceremony of Erdogan at his invitation. I deeply believe that – particularly during difficult times – when two Greek military officers are unjustly being held in Turkish prisons, the maintenance of channels of communication with the Turkish leadership is an act [indicating] seriousness and responsibility."

8. On the same day, P.K. posted the following tweet on his personal Twitter profile:

> "With two Greek military officers [being held] hostage, Dora Christoforakou-Marinaki [the applicant] is going to pay her respects to the Sultan ... . Turkish heroin is paying ... WAKE UP!!!!"

I. CRIMINAL PROCEEDINGS BROUGHT BY THE APPLICANT AGAINST P.K.

9. On 6 August 2018 the applicant lodged a criminal complaint against P.K. before the Athens prosecutor of first instance. She sought his criminal prosecution for the offences of verbal abuse and libel through the media (Articles 361, 362 and 363 of the Criminal Code), asserting that P.K. had published on his personal Twitter profile a post containing a defamatory content. In particular, the applicant argued that the tweet in question had offended her honour and dignity because it had referred to her as "Christoforakou-Marinaki", despite the fact that her last name was Bakoyanni (the name of her late husband, who had been killed by a terrorist group). The applicant argued that referring to her by using those last names implied that she was in a transactional and dependent, financial, professional, or other relationship with Mr Christoforakis and Mr Marinakis (the former CEO of Siemens in Greece and a Greek ship owner, respectively), which was not true. The applicant also complained of the fact that P.K. had alleged that she was "going to pay tribute to the Sultan". According to her, that phrase suggested servile and indecent behaviour on her part. Lastly, she argued that the phrase "the Turkish heroin is paying ... WAKE UP!!!!" implied that she had been paid in order to attend the ceremony in question.

10. In her complaint, the applicant stated that she sought compensation of 44 euros (EUR) for the non-pecuniary damage that she had sustained as a result of P.K.'s tweet. She had also requested that the court, in the event of a conviction, order that its judgment be published in two Athenian newspapers at the expense of P.K.

11. Following the lodging of the applicant's complaint, a criminal case was opened in respect of P.K. concerning the offence of libel (Articles 362 and 363 of the Penal Code).

12. In view of the fact that P.K. was a member of parliament, the case file was submitted by the prosecutor of the First-Instance Court of Athens to the Office of the prosecutor of the Supreme Court and then forwarded, *via* the then Minister of Justice, Transparency and Human Rights, to the Greek Parliament, in order for the latter to decide whether or not to authorise the criminal prosecution of P.K. under Article 62 of the Constitution.

13. The case was referred to the Committee on Parliamentary Ethics in order for a report to be prepared on the lifting of P.K.'s immunity from prosecution (under Articles 43A § 1 (h) and 83 of the Parliamentary Regulations) in respect of the above-mentioned complaint lodged by the applicant.

14. On 4 December 2018 P.K. submitted a memorandum to the Committee on Parliamentary Ethics. He argued that on 7 July 2018 he had been the Minister of Defence and that the procedure set out by Article 86 of the Constitution should therefore be followed.

15. On the same day, the Committee ruled that, in view of P.K.'s position as Minister of Defence, Articles 61 and 62 of the Constitution did not apply but, rather, Article 86 of the Constitution and Articles 153 et seq. of the Parliamentary Regulations. As a result, criminal proceedings in respect of his actions could only be initiated by Parliament. Consequently, P.K.'s immunity was not lifted.

16. As transpires from the case file, Parliament did not initiate proceedings against P.K. by virtue of Articles 153 et seq. of the Parliamentary Regulations (see paragraph 23 below).

II. CIVIL PROCEEDINGS INSTITUTED BY THE APPLICANT AGAINST P.K.

17. On 6 August 2018, the applicant brought a civil action against P.K. for a breach of her personality rights (Articles 57 et seq., 914 et seq. of the Civil Code) – which he had committed by spreading slander and posting libellous tweets – seeking, *inter alia*, EUR 200,000 in compensation for the non-pecuniary damage that she had sustained. She also asked that P.K. refrain from infringing her personality rights in the future and that P.K. ensure that the judgment be published in "*Kathimerini*" newspaper within fifteen days of his being notified of it, pursuant to Law no. 1178/1991.

18. On 12 August 2019 the First-Instance Court of Athens, sitting as a single judge, allowed in part the applicant's action against P.K. and ordered him to pay to the applicant EUR 5,000 (judgment no. 9529/2019). In particular, the civil court assessed all the information in the case file and held that P.K.'s comments regarding the applicant went beyond the reasonable limits of his right to criticise heavily – even in a severe tone – the applicant's decision to attend the inauguration of the Turkish President and reached the point of attacking her character, aiming to impugn her honour and the esteem

in which she had been held and infringing her personality rights and "political entity" (*πολιτική οντότητα*). According to the court, the means by which P.K.'s behaviour had manifested itself and the circumstances in which it had been expressed had indicated the intention to insult the applicant's honour, dispute the applicant's moral and social standing and call into question her worth as a person and as a politician. The court dismissed P.K.'s arguments regarding the lack of jurisdiction (given P.K.'s position as a Member of Parliament), citing the case-law of the national courts on the matter, according to which the principle of immunity for members of Parliament under Article 61 of the Constitution applied solely to cases relating to an opinion expressed or a vote cast in the discharge of their parliamentary duties and not to other expressions of opinion, such as an opinion expressed in the media or online, delivered while engaged in activities that lay outside their parliamentary work.

19. The court refused the applicant's request that its judgment be published. It considered that Law no. 1178/1981 (see paragraph 33 below) could not be applied in the present case, as it concerned only the owner of the medium in which the breach of personality in question had taken place and could not be extended to other persons.

20. On 10 October 2019 P.K. lodged an appeal. The hearing was set for 22 October 2020. According to information received from the parties in May, June and August 2022, on 30 November 2020 the Court of Appeal of Athens allowed the appeal (judgment no. 6565/2020). It considered that the case should have been heard by the First-Instance Court of Athens, sitting in a formation of three judges, and referred the case to that court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. GREEK CONSTITUTION

21. The relevant Articles of the Constitution, as applicable at the material time, read as follows:

Article 61

"1. Under no circumstances may an MP be prosecuted or be examined on the basis of an opinion expressed or a vote taken in the exercise of his or her parliamentary functions. ...

2. A member may be prosecuted only for slander, under the law, after Parliament has granted leave [for such a prosecution] ..."

Article 62

"1. An MP cannot be prosecuted, arrested, detained or restrained in any other way during a parliamentary session without the permission of Parliament ..."

Article 86

"1. Only Parliament has the power to prosecute serving or former members of the Cabinet or Deputy Ministers [*Υφυπουργοί*] for criminal offences that they committed during the exercise of their duties, as specified by law. ...

3. A motion for the institution of prosecution [must be] submitted by at least thirty members of Parliament. ...

4. The court with jurisdiction to try such cases at first and final instance is, as the highest court, a Special Court, which is composed for the purposes of each [individual] case by six members of the Council of State and seven members of the Supreme Civil and Criminal Court. ..."

22. According to judgments nos. 2644/2013 and 4061/2014 of the First-Instance Court of Athens, the expression of an opinion by a member of parliament in print, on television or *via* the Internet does not concern his or her parliamentary functions.

II. PARLIAMENTARY REGULATIONS

23. The relevant Articles of the Parliamentary Regulations read as follows:

Article 83

"1. Requests made by the Public Prosecution Service for leave to initiate a criminal prosecution against an MP under Articles 61 § 2 and 62 § 1 of the Constitution are to be submitted to Parliament by the Minister of Justice after they have been examined by the prosecutor of the Court of Cassation and are recorded in a special register according to the order in which they were lodged.

2. Following the submission of [such] requests, the Speaker of Parliament shall forward them to the Parliamentary Ethics Committee, in accordance with Article 43A § 1 (g).

3. The Committee, after hearing the member in question, shall, if the latter so wishes, ... examine (on the basis of the attachments to the application) whether the act in respect of which the lifting of immunity is requested is related to the political activities of the MP [in question], [and] whether there are political motives behind the [intended] criminal prosecution. In such cases, the committee shall refuse the request.

4. The Committee shall not examine the validity of the charges ... and shall [complete] its report by the deadline set by [the Speaker] ... .

6. Requests for a waiver shall be entered in the order of business of the Plenary Session following the submission of the Committee's report ..."

Article 153

"1. Parliament shall have the capacity to impeach those who are, or have been members of the Cabinet, or [who are, or have been] Deputy Ministers, for criminal offences committed during the discharge of their duties, under the provisions of Article 86 of the Constitution and the Act on Ministers' Liability ... ."

III. CRIMINAL CODE

24. The relevant Articles of the Criminal Code read, at the material time, as follows:

Article 362
Defamation

"Anyone who by any means disseminates information to a third party concerning another which may harm the latter's honour or reputation shall be punished by up to two years' imprisonment or a pecuniary penalty. A pecuniary penalty may be imposed in addition to imprisonment."

Article 363
Slander

"1. If, [in respect of an instance listed] under Article 362, the information is false and the offender was aware of its falsity, he or she shall be punished by at least three months' imprisonment, and, in addition, a pecuniary penalty may be imposed and deprivation of civil rights under Article 63 may be ordered."

Article 229
False accusation

"3. The court may, at the request of the victim, allow its decision to be published at the expense of the convicted person."

Article 263 B § 4 and 5
Leniency measures in respect of those who contribute to the detection of acts of corruption

"...

4. a) If one of the perpetrators of the crimes provided in Articles 235-61 and 390 – or of acts concerning the laundering of money directly derived from specific criminal activities – provides evidence of the participation in those acts of persons who are or were members of the Government or Deputy Ministers, then the Judicial Council, by a decision issued upon the proposal of a prosecutor, shall order the suspension of the criminal prosecution against him [or her]. That suspension may be ordered by the court even in the event that elements of proof are submitted by the delivery of a decision at second instance. ...

b) If Parliament deems, ... [under] paragraph 3 of Article 86 of the Constitution, that the elements are not sufficient for the criminal prosecution of a Minister or Deputy Minister, the ... decision shall be revoked, and the suspended criminal prosecution shall continue. If Parliament decides ... to prosecute a Minister or Deputy Minister under Article 86 of the Constitution, then in the event of conviction by the Special Court, the participant who provided the evidence under the previous paragraph shall be punished with a sentence reduced to the extent [provided by] Article 44 § 2 (1). ...

5. If the initiation of criminal proceedings is not possible owing to the fact that the criminal act has lapsed (*λόγω εξάλειψης του αξιόποινου*) [that is to say the act in question is no longer deemed to be criminal in nature], then under the provisions of Article 86 § 3 (b) of the Constitution, the accused shall be given a sentence reduced to

the extent provided by Article 44 § 2 (a). The court may also order the suspension of the execution of this sentence, in accordance with the provisions of paragraph 2."

Article 369
Publication of the judgment

"1. Paragraph 3 of Article 229 also applies to instances falling under Articles 361, 362, 363, 364 and 365 to the benefit of the person who lodged the complaint [in question] ... . If the act [in question] was committed by [means of] a press article, the publication of the court's decision' must be made by means of the publication in a newspaper of at least the reasoning and operative part of the decision."

IV. CODE OF CRIMINAL PROCEDURE

25. The relevant provisions of the Code of Criminal Procedure, as applicable at the material time, read as follows:

Article 63
Locus standi

"Persons who are entitled, under the Civil Code, to compensation for non-pecuniary damage and [the costs of] the remedying of damage may join criminal proceedings as civil parties ... ."

Article 65
Criminal court's powers in civil action

"1. A criminal court cannot examine a civil action if it decides that no proceedings must be initiated or when it acquits the defendant for any reason.

2. The criminal court that hears a civil action must decide thereon. Exceptionally, it may refer it to the civil courts [for adjudication regarding] any claimed money ..., provided that the requested sum exceeds Eur 44. The criminal court shall reach its decision freely whenever it hears compensation cases. ..."

26. As regards claims lodged within a civil action, Greek law does not provide that the outcome of such claims is dependent upon the outcome of criminal proceedings. Civil claims may be pursued independently and in their entirety before civil courts, irrespective of whether a defendant has been sentenced or acquitted by a criminal court, and the fact that criminal proceedings have been initiated does not mean that any civil proceedings must be suspended. According to judgment no. 1474/2000 of the Court of Cassation, the interested party is entitled to pursue a remedy either before civil or criminal courts in respect of both pecuniary and non-pecuniary damage.

27. Judgment no. 940/2013 of the Court of Cassation refers to the publication of a judgment as an "accessory penalty". The Court of Cassation, in the case in question, quashed a decision issued by the Court of Appeal on the basis that that decision had been published even though the victim had not requested such publication.

28. The new Code of Criminal Procedure, which was introduced by Law no. 4620/2019 and which entered into force on 1 July 2019, redefines the position and nature of civil complainants within the context of criminal proceedings and provides that the presence of the complainant is required only in order to corroborate the charges in question.

V. CIVIL CODE

29. The relevant provisions of the Civil Code can be found in *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 17, ECHR 2013 (extracts).

30. According to the case-law of the Supreme Court, and in particular judgments nos. 1216/2014, 726/2015 and 105/2020, personality rights can also be infringed by a criminally punishable act, as is the case when a person's honour and esteem is prejudiced through demonstrations or the making of allegations that are slanderous or libellous within the meaning of Articles 361-363 of the Criminal Code.

31. According to judgments nos. 15/2020 of the Aegean Court of Appeal and 97/2018 of the Court of Cassation, a breach of one of the various aspects of personality constitutes an insult to the whole notion of personality.

VI. LAW NO. 3126/2003 ON THE CRIMINAL LIABILITY OF MINISTERS ("THE ACT ON MINISTERS' LIABILITY")

32. At the material time the relevant provisions of this law read as follows.

Section 1
Scope

"1. Misdemeanours or felonies committed by a minister in the discharge of his/her duties shall be tried pursuant to the provisions of this law by the Special Court, as stipulated by Article 86 of the Constitution, even if the minister has ceased to hold that office. ..."

Section 15
Hearing

"5. No civil action can be filed before the Special Court. Any action for compensation or action for pecuniary satisfaction for non-monetary damage [*χρηματική ικανοποίηση λόγω ηθικής βλάβης*] shall be lodged and heard, pursuant to applicable provisions."

Section 15 § 5 was abolished by Law no. 4855/2021, which entered into force on 12 November 2021.

VII. LAW NO. 1178/1981 ON THE CIVIL LIABILITY OF THE MEDIA AND OTHER PROVISIONS

33. The only provision of Law no. 1178/1981 reads as follows, in its relevant parts:

> "1. The owner of a printed medium is obliged to render full compensation for both unlawful material damage and monetary compensation for non-pecuniary damage that was caused by the publication [of material] that has injured the honour or reputation of any person ....
>
> 6. In the event that an action brought under this Article is upheld against a newspaper, the court, if a request has been made at the latest before the court of first instance, shall order ...The publication of a summary of the judgment in that newspaper. This summary should contain:
>
> (a) the number and the date of publication of the decision;
>
> (b) the court that issued it;
>
> (c) the first and last name of the person affected by the impugned publication;
>
> (d) the phrases deemed defamatory or offensive on the basis of which compensation or pecuniary damage has been awarded; and
>
> e) the newspaper and the date of the publication. ..."

34. According to judgments no. 576/2015 of the Court of Cassation, no. 3072/2014 of the Court of Appeal of Athens and no. 497/2017 of the one-member First-Instance Court of Athens, this provision applies *mutatis mutandis* to the breach of personality rights committed by spreading slandering, insulting and libellous comments online, on websites and in blogs.

35. According to judgment no. 1750/2013 of the Court of Cassation, if the publisher does not respect the obligation to publish a summary of the judgment in question within fifteen days, he shall be fined for every day of delay. If the obligation to publish is not respected, the person in question can be punished by imprisonment of up to one year, or with a fine (judgment no. 1775/2005 of the Court of Cassation).

36. In judgment no. 2/1995, the Court of Cassation held that only the victim can, if the proceedings are in his or her favour, request the publication of the judgment in question.

37. By judgment no. 6148/2013, the Athens Court of First Instance, while examining an action for compensation in respect of a breach of personality, it allowed, *inter alia*, a request that the defendant be ordered to arrange for that judgment to be published.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

38. The applicant complained that the refusal of the Greek Parliament to lift the immunity of P.K. had violated her right of access to a court under Article 6 § 1 of the Convention, which, in its relevant parts, reads as follows:

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

A. Admissibility

1. The parties' arguments

(a) Compatibility *ratione materiae*

39. The Government argued that the impugned proceedings did not fall within the scope of Article 6 § 1 of the Convention and that the application should therefore be declared inadmissible *ratione materiae*. They argued that the civil right that the applicant sought to protect was the right to personality, which had been breached by P.K.'s post on Twitter. Along with her criminal complaint, the applicant had brought an action for compensation, which had been upheld at first instance. In particular, the competent court had recognised that the post had breached the applicant's personality rights and awarded her compensation. Therefore, according to the Government, the applicant's civil rights had not been affected. On the contrary, they had been satisfied by the civil court's recognition that the applicant's personality right had been breached and by the awarding of compensation.

40. Moreover, according to the Government, the outcome of the civil proceedings had not depended on the outcome of the criminal proceedings since, under Greek law, a judgment of any criminal court was not binding on a civil court. Therefore, the fact that the criminal proceedings had not been initiated was not decisive for the applicant's rights. In addition, the criminal proceedings against P.K. would continue solely in respect of the criminal sentencing of P.K. – namely, for purely punitive purposes. However, the Convention does not recognise the right to have third parties prosecuted or convicted.

41. The applicant invited the Court to dismiss the objection. She submitted that the Government had not argued or proved that the complaint that she had lodged with the domestic courts had been aimed at taking revenge on P.K. She added that in addition to the right to lodge a claim for compensation, the right to a good reputation was another right (of a civil nature) that she was aiming to protect.

(b) Lack of victim status

42. The Government argued that the applicant had pursued her claims against P.K. before the civil courts which, while her complaint had been pending, had recognised that she had sustained non-pecuniary damage and had awarded her compensation. Therefore, the applicant had obtained satisfaction from the national courts and it should be accepted that she had lost her victim status.

43. The applicant submitted that her reputation could only have been restored by the publication of the judgment of the criminal court against P.K. According to the applicant, such reparation was provided for by the Criminal Code (Articles 361-363), but not by the law that addressed the question of the civil liability of the media. She added that under Article 369 § 1 of the Criminal Code, applicable at the material time, the victim could have asked the criminal courts to order the publication of the judgment awarding her damages (see paragraph 27 above). That provision had not been modified by the new Criminal Code. A victim always had the right to request the publication of a judgment, and the criminal court could order such publication. If the obligation to publish was not respected, the person responsible for the failure to ensure publication could be punished by imprisonment of up to one year, or with a fine (see paragraph 35 above).

44. The applicant added that Law no. 1178/1981 provided for the possibility that a civil court could order the publication of a judgment, but only if the damage in question had been caused by the media and if responsibility lay solely with the publisher, who, if he did not respect the obligation to publish within fifteen days, would be fined for every day of delay (see paragraph 35 above). In the present case, the applicant had requested (under Law no. 1178/1981) the publication of a summary of the judgment upholding her civil action; however, the court had refused her request, as the breach of her personality had taken place through the medium of Twitter, and P.K. had not been the owner of a "printed document". In the criminal complaint lodged by her, the applicant had asked that, in the event of P.K. being convicted, the judgment be published in two daily Athenian newspapers. Therefore, according to the applicant, if Parliament had lifted P.K.'s immunity and he had been convicted, the criminal court would have ordered the publication of the judgment. Accordingly, the element which the applicant considered to constitute the main damage caused by the breach of her personality rights had not been and could not be redressed.

(c) Non-exhaustion of domestic remedies

45. According to the Government, an action for compensation is the most appropriate and suitable remedy for satisfying the applicant's civil rights. This action was upheld at first instance and is pending appeal. Therefore, the available domestic remedies have not been exhausted.

46. The applicant submitted that her reputation could only be restored by means of the publication of the judgment, ordered by the criminal court.

2. The Court's assessment

47. The Court considers that the Government's above arguments are closely linked to the merits of the applicant's complaint and should be examined under the substantive provision of the Convention relied upon by the applicant. It accordingly joins the Government's objections to the merits of the case.

The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

48. The applicant argued that the restriction of her right of access to a court had violated the very substance of that right and had been disproportionate. She argued that her good reputation could not have been remedied by the award of compensation by the civil courts, and that the publication of P.K.'s conviction was necessary.

49. As regards the question of whether such a restriction was provided for by law, the applicant submitted that Article 86 of the Constitution applied to government ministers and former ministers "in respect of criminal offences that they committed during the exercise of their duties". In the present case, in defaming and insulting the applicant, P.K. had not been exercising his duties as a minister. She added that relying on Article 86 of the Constitution was arbitrary. The relevant prosecutor had asked Parliament to waive P.K.'s immunity on the basis of Article 62 of the Constitution (which applied to the immunity of members of parliament) and not on the basis of Article 86 (which applied to government ministers). According to the applicant, the legal basis of her request had been arbitrarily modified following the submission of a memorandum to the Committee on Parliamentary Ethics by P.K. In its judgment no. 9529/2019 the first-instance court had held that the tweet in question had not fallen within the grounds set out in Article 61 of the Constitution for refusing to grant a waiver, and that the issue of the application of Article 86 of the Constitution had not been examined. In addition, in his appeal against judgment no. 9529/2019, P.K. had claimed parliamentary immunity under Articles 61 and 62 of the Constitution (and not under Article 86 of the Constitution on account of his having been exercising his "ministerial functions"). According to the applicant, the case-law of the Greek courts was very clear that the expression of an opinion by a member

of parliament in printed documents, on television or on the Internet did not fall within his parliamentary functions (see paragraph 22 above). The offences that were related to "ministerial functions" were clearly set out in Article 263 B § 4 and 5 of the Criminal Code, as applicable at the relevant time. On the contrary, the offences under Articles 361 to 363 of the Criminal Code were not part of this Article. The applicant also submitted that Parliament had never linked the criminal responsibility of a minister to offences defined in these Articles. She submitted examples of six cases where Article 86 of the Constitution had been applied and argued that in the present case there had been no legal basis for the impugned restriction.

50. The applicant added that the Government had not explained in their observations what had been the legitimate aim of that restriction. Even assuming that the aim pursued had been the protection of the MP's freedom of expression, it was clear that it had been Articles 61 and 62 and not 86 of the Constitution that had applied.

51. As regards the proportionality of the restriction, the applicant argued that the damage to her good reputation had not been linked to P.K.'s parliamentary functions *stricto sensu*. It had been committed through the medium of a tweet, without P.K. having been provoked by the applicant, a journalist, or a third politician. The tweet had contained at least two passages which had not been related to a political debate: the use of the surname "Christoforakou-Marinaki" as the applicant's last name, which had undermined the memory of her murdered husband, Pavlos Bakoyannis, by a terrorist organisation; and the phrase "the Turkish heroin pays ..." which had constituted a direct attack on her honour. According to the applicant, the First-Instance court of Athens had followed what had constituted the case-law of the Greek courts regarding parliamentary immunity for the previous fifteen years. In addition, it had already been ruled by the Greek courts that the expression of an opinion by a member of parliament in printed texts, on television or on the internet did not involve the exercise of his or her parliamentary functions (judgments nos. 2644/2013 and 4061/2014 of the First-Instance court of Athens – see paragraph 22 above). Lastly, by amending Article 63 of the Constitution in 2019, Greece had brought itself into compliance with the case-law of the Court. Even assuming that the tweet in question had been posted by P.K. while exercising his parliamentary functions, Article 61 of the Constitution provided for the possibility for an exception to be made in the case of defamation, including in respect of the non-liability of deputies. In particular, this Article provided the possibility for Parliament to lift parliamentary immunity even if the alleged defamation had been committed in the exercise of the MP's functions. According to the applicant, in this manner the Constitution weighted the freedom of expression of the MP against the victim's right to protection against defamation.

(b) The Government

52. The Government submitted that the applicant's right of access to a court had not been violated. The applicant had had at her disposal the possibility of bringing an action for compensation in the civil courts, which she had used. According to the Government, an action for compensation had constituted the most appropriate and effective remedy for the protection of her civil rights and obligations. Her action had been heard by the one-member First-Instance court of Athens and she had been awarded compensation; therefore she had not been deprived of her right of access to a court. The fact that Parliament had not waived P.K.'s parliamentary immunity and that the criminal proceedings could not continue had not prejudiced the applicant's right.

53. They added that, assuming that the criminal proceedings had continued following the waiver of P.K.'s immunity, this would have had no effect on the action for compensation, since they had constituted two independent procedures. In addition, following the examination of the applicant's action for compensation, her participation in the criminal proceedings against P.K. would have been limited to the corroboration of the charges. Consequently, the outcome of the criminal proceedings had not been decisive for the applicant's rights. Even if Parliament had, applying Article 86 of the Constitution, consented to the initiation of criminal proceedings against P.K., the case would have been heard by the Special Court, before which the applicant could not, under Article 15 § 5 of Law no. 3126/2003, have become a civil party.

54. Furthermore, the reasoning for Parliament's refusal to waive immunity – that is to say, whether that refusal was based on Article 61 or 86 of the Constitution – did not have any bearing on the instant case. The Government argued that the Court in its case-law addressed in a uniform manner the question of the right of access to a court, addressing the restriction in the light of proportionality and attributing importance to the accessibility and effectiveness of the remedies available, especially before the civil courts.

55. In so far as the applicant's argument that her right to a "good reputation" had not been satisfied, the Government argued that "good reputation" was an expression of the right to personality. The latter, in its turn, was a set of elements constituting the substance of a person. Those elements, which included honour and reputation, were not autonomous rights, but rather expressions of the right to personality. A breach of personality in relation to any of these aspects constituted an infringement of the overall concept of personality rights (see paragraph 31 above). The question of whether it was civil or criminal law that prohibited breach of personality was irrelevant. In the present case, the recognition by the civil courts of the breach of the applicant's personality rights had satisfied the applicant's civil right, in their entirety. Since there had been no "active infringement" of the applicant's personality, the award of compensation constituted sufficient redress. In

addition, the publication of a judgment could be ordered both by civil and criminal courts, at their discretion (see paragraph 37 above). In the present case, the applicant's request had been refused by the relevant civil court and the applicant had not appealed. In conclusion, according to the Government, recourse to criminal courts would not have afforded a broader protection to the applicant compared to that afforded by civil courts.

2. The Court's assessment

(a) General principles

56. The right of access to a court guaranteed by Article 6 was established in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 84, 29 November 2016, with further references to the Court's case-law).

57. However, that right is not absolute and 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, regulation which may vary in time and in place according to the needs and resources of the community and of individuals (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict 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, a limitation 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 *Grzęda v. Poland* [GC], no. 43572/18, § 343, 15 March 2022, *Lupeni Greek Catholic Parish and Others,* cited above,§ 89; see also *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I and *Cordova v. Italy (no. 1)*, no. 40877/98, § 54, ECHR 2003-I).

58. When a State affords immunity to its MPs, 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. 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*, no. 35373/97, § 83, ECHR 2002-X and *Tsalkitzis v. Greece*, no. 11801/04, § 45, 16 November 2006).

However, 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; *Syngelidis v. Greece*, no. 24895/07, § 42, 11 February 2010; and *Anagnostou-Dedouli v. Greece*, no. 24779/08, § 48, 16 September 2010).

59. The Court must first examine whether such limitation pursued a legitimate aim. In that context, it has identified as underlying aims of the immunity accorded to members of Parliament as being to allow such members to engage in meaningful debate and to represent their constituents on matters of public interest without having to restrict their observations or edit their opinions because of the danger of being amenable to a court or other such authority, as well as the maintenance of separation of powers between the legislature and the judiciary (see *Young v. Ireland*, no. 25646/94, Commission decision of 17 January 1996, DR 84-A, p. 122, and *A.*, cited above, §§ 75-77 and 79).

60. Second, the Court examines whether the limitation in question is proportionate to the aims pursued, in particular whether the person concerned has reasonable alternative means to protect effectively his or her rights and if the immunity is attached only to the exercise of parliamentary functions (*A.*, cited above, § 86, and *Zollmann v. the United Kingdom* (dec.), no. 62902/00, ECHR 2003-XII).

61. A lack of any clear connection with parliamentary activity calls for a narrow interpretation of the concept of proportionality between the aim pursued and the means employed (*Cordova v. Italy (no. 2)*, no. 45649/99, § 64, ECHR 2003-I (extracts) and *Anagnostou-Dedouli,* cited above, § 50).

(b) Application of the above principles to the present case

62. The Court notes at the outset that the present case differs from the *Tsalkitzis* and *Syngelidis* (cited above) both in the position of the applicant vis-à-vis the possibility of lifting P.K.'s immunity and in the applicable legislative framework. Those cases concerned Parliament's refusal to authorise criminal proceedings against MPs under Articles 61 and 62 of the Constitution and Article 83 of the Regulations of Parliament. The present case, as *Anagnostou-Dedouli* (cited above), concerns the Greek Parliament's refusal to lift the immunity of a minister in order to have criminal proceedings

instituted against him, pursuant to Article 86 of the Constitution and section 15 of the Act on Ministers' Liability (see paragraphs 21 and 32 above).

63. The Court notes that Article 86 of the Constitution provides for the preferential treatment of ministers in respect of criminal offenses, which manifests itself in the exclusive jurisdiction of Parliament to initiate criminal proceedings against a minister and in the shortness of the time within which Parliament may be called upon to exercise its jurisdiction (see *Anagnostou-Dedouli*, cited above, § 52). The Court has recognised, to a certain extent, the legitimacy of the aim pursued by this regulation: the fact that the introduction of the procedure depends on the decision of a political body may appear questionable; however, it tends to avoid the penalisation of political life and the untimely intervention of justice in the conduct of political affairs (ibid.).

64. However, as stated above, the Court must be satisfied that the limitation imposed to the applicant's access to a court was proportionate to the legitimate aim pursued (see paragraph 91 above).

65. The Court recalls that the Convention does not guarantee the right to institute criminal proceedings or secure the conviction of a third party (*Irene Wilson v. The United Kingdom* (dec.), no. 10601/09, § 29, 23 October 2012, and *M.T. and S.T. v. Slovakia* (dec.), no. 59968/09, § 83, 29 May 2012, with further references therein). The possibility to have third parties prosecuted or sentenced for a criminal offence cannot be asserted independently: it 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" (*Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I).

66. The Court notes that the applicant brought a civil action against P.K. seeking compensation for non-pecuniary damage. The applicant also sought, both through a civil action and her criminal complaint against P.K., a specific relief in that any future judgment in the event of his conviction be published in a newspaper.

67. According to Greek legislation, this relief sought by the applicant could not be obtained in the context of the civil proceedings instituted by her, as the relevant domestic law provides for such an obligation to be imposed only on the owner of the printed medium (see paragraph 33 above). The relevant domestic law no. 1178/1981, which refers to the "civil law liability of the press", applies also by way of analogy (according to the Greek case law – see also judgment no. 9529/2019 of the First-Instance Court of Athens, paragraph 18 above) to online expressions of opinions. The civil proceedings could therefore not have provided her with sufficient relief in this respect or remedied the damage allegedly caused to her reputation.

68. Turning to the criminal proceedings, the Court notes that by lodging the criminal complaint against P.K. on 6 August 2018 it was her reputation

that the applicant was trying to protect (see paragraphs 9 - 10 above). The applicant explicitly requested that the criminal court, in the event of a conviction, order that its judgment be published in two Athenian newspapers at the expense of P.K. The Court cannot speculate on the possibility of P.K.'s conviction. It can merely examine whether the applicant had the possibility of seeing her claim relating to her civil rights and obligations brought before a court.

69. The crucial point in the present case is that the publication of a judgment in newspapers in cases where the alleged perpetrator is a private person was only possible in the context of criminal proceedings, following a request of the victim. In particular, Article 369 of the Criminal Code stipulates that if the act in question was committed by the publication of the offending material in the media, then the publication of the judgment must take the form of the publication in a newspaper of at least the reasoning and operative part of the ruling in question (see paragraph 24 above). It follows that the impossibility of initiating criminal proceedings against P.K. had an irreparable effect on the declared aim of the applicant, which was to have her reputation restored in the eyes of the public.

70. The Court further observes that the applicant's criminal complaint concerned the alleged offences of verbal abuse and libel through the media which, in her submission, offended her honour and dignity because of P.K.'s tweet (see paragraph 9 above). It cannot therefore be said that the impugned conduct was linked to the exercise of his parliamentary or ministerial functions. The one-member First-Instance Court of Athens, in its judgment no. 9529/2019 also held that the tweet in question did not fall under the grounds justifying a prohibition on lifting the immunity granted by Article 61 of the Constitution and did not address the issue of the application of Article 86 of the Constitution (see paragraph 18 above).

71. The Court also attaches importance to the fact that section 15 § 5 of the Act on the Ministers' Liability, stipulating that no civil action can be filed with the Special Court, was abolished by Law no. 4855/2021 (see paragraph 32 above). Consequently, it is now possible for an interested party in a comparable situation to assert his or her civil claims before the Special Court.

72. In view of the foregoing, the Court dismisses the Government's preliminary objections. Having regard, in particular, to the fact that the damage allegedly caused to the applicant's reputation could only have been remedied in the context of criminal proceedings, as well as to lack of any clear connection between P.K.'s conduct and his parliamentary or ministerial activities, it concludes that the refusal to lift his immunity impaired the very essence of the applicant's right of access to a court.

73. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 7,125.04 euros (EUR) in respect of pecuniary damage. This amount corresponds, according to her, to the fees she would pay for the publication of the Court's judgment in two Athenian newspapers. She also requested EUR 5,000 in respect of non-pecuniary damage.

76. The Government argued that the finding of a violation should constitute sufficient just satisfaction for the non-pecuniary damage sustained by the applicant, since she had already been awarded EUR 5,000 in compensation by the domestic civil court. They added that the amount sought in respect of pecuniary damage had no causal link to the alleged violation. In any event, the amounts requested were excessive and unjustified in view of the circumstances of the case.

77. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant suffered non-pecuniary damage and awards her EUR 5,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

78. The applicant also claimed EUR 1,240 EUR for the costs and expenses incurred before the Court. She submitted an invoice in support of her claim.

79. The Government submitted that the amount requested by the applicant was excessive.

80. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum sought by the applicant in its entirety, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's preliminary objections concerning incompatibility *ratione materiae*, the applicant's lack of victim status and non-exhaustion of domestic remedies and *dismisses* them;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
   (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, the following amounts:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,240 (one thousand two hundred and forty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar	Marko Bošnjak President