LEGAL BRIEFING – Dispute Resolution & Restructuring

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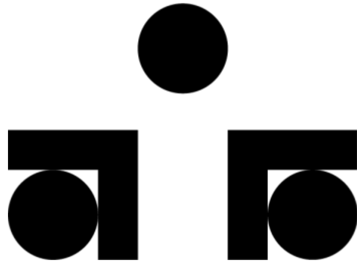
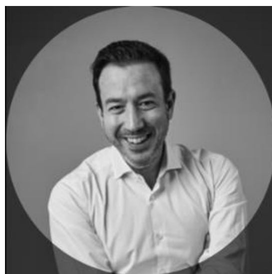


Conviction of Greece by the European Court of Human Rights: Violation of the right of access to Court

02 July 2020



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In the recent ruling on the "Kandarakis" case, the European Court of Human Rights condemned Greece, on the basis of article Article 6 of the Convention.

The applicants were lawyers registered with the Athens Bar Association. After representing a number of clients in three sets of expropriation proceedings, a certain amount was awarded to those clients for court expenses incurred, including lawyers' fees.

Pursuant to domestic legislation, that amount was deposited in the Consignment Deposits and Loans Fund to the benefit of the bar association with which the representatives of the person whose property was expropriated were registered. Under the law, such money should be deposited in the Fund so that the relevant bar association can then request the money and – having withheld for itself a percentage prescribed by law – forward the remainder to the lawyer concerned.

The applicants complained under Article 6 of the Convention about the judgments delivered by the domestic courts dismissing their applications to have those amounts handed over to the Athens Bar Association, holding that only the relevant bar association could directly initiate proceedings seeking the payment of that amount and that the applicants could only bring a subrogation action.

The applicants complained that the dismissal of their actions, on the grounds that they had lacked *locus standi*, had violated their right of access to a court, as provided in Article 6 of the Convention.

On its ruling, the Court refered to its general principles concerning the applicability of the civil limb of Article 6 § 1 (see *Denisov v. Ukraine* [GC], no. 76639/11, § 44 -45, 25 September 2018).

The Court held that the right of access to a court must be "practical and effective", not theoretical or illusory (see, to that effect, *Bellet v. France*, 4 December 1995, § 36, Series A no. 333-B). This observation is particularly true in respect of the guarantees provided by Article 6, in view of the prominent place held in a democratic society by the right to a fair trial (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 45, ECHR 2001-VIII). For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that constitutes an interference with his or her rights (see *Nunes Dias v. Portugal* (dec.), nos. 2672/03 and 69829/01, ECHR 2003-IV, and *Bellet*, cited above, § 36). Equally, the right of access to a court includes not only the right to institute proceedings but also the right to obtain a "determination" of the dispute by a court (see, for example, *Fălie v. Romania*, no. 23257/04, §§ 22 and 24, 19 May 2015, and *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II).

The Court concluded that the restriction imposed on the applicants' right of access to a court was not proportionate and awarded 10,000 euros to each of them for non-pecuniary damage and 1,500 euros jointly for costs and expenses.

The Court also dismissed the remainder of the claim for just satisfaction.

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