Chapter Six

The European Court of Human Rights in Greece: Litigation, Rights Protection and Vulnerable Groups

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1. Introduction

The European Court of Human Rights (ECtHR) appears to have turned into a precious platform of support for less privileged individuals and communities. The Greek case is illustrative in this respect. Since 1985 when Greece recognised the right to individual petition, litigants from various politically and socially marginalised groups have resorted to the Court, claiming correction of domestic shortcomings in human rights protection. Clearly, the majority of applications lodged with the ECtHR and alleging breach of the European Convention on Human Rights (ECHR or Convention) have dealt with due process and property rights. Notwithstanding, a significant number of ECtHR judgments has originated in applications filed by individuals attesting belonging to the country's historical ethnic and religious minorities. Over the past 10 years, individuals from new immigrant communities and the Roma have also increasingly taken recourse to the Court, asserting breach of their rights.

There are 56 ECtHR judgments, discussed on the merits and issued before 1 June, 2008, which arguably reflect the Greek authorities’ disinclination in recognising, affirming and promoting pluralist standards in domestic society. Thirty cases have engaged the theme of minority protection whilst 26 have stemmed from applications by immigrants and foreigners. In many of these cases the Court ruled on the basis of Article 9 (freedom of thought, conscience and religion) and Article 11 (freedom of assembly and association) ECHR. There has only been one judgment declaring violation of Article 8 (right to respect for private and family life) ECHR. Four judgments found infringement of Article 14 (prohibition of discrimination) ECHR, read together with other Convention provisions, such as Article 6 (right to a fair trial), Article 9 and Article 13 (right to an effective remedy) ECHR. The Court has further
pronounced violations of Article 2 (right to life) and Article 3 (prohibition of torture) ECHR in cases filed by foreigners and the Roma, as well as infringement of Article 5 (right to liberty and security) ECHR in cases brought by aliens and individuals forming part of religious minority creeds. In the latter, the Court has also ascertained breach of Article 13 ECHR. Notably, in all categories of ECtHR rulings under study, breaches of Article 6 ECHR were also detected.

The variety of ECHR articles found violated reflects the multifaceted nature of claims that members of vulnerable groups are unsuccessful in vindicating before Greek courts. Bearing in mind that exhaustion of domestic remedies determines the admissibility of bringing a case to Strasbourg, it can reasonably be surmised that the Greek judiciary is reluctant (or even denies) to defend and secure particular types of demands by vulnerable groups. Plainly, many of the cases under examination pertain to systemic deficiencies of the Greek legal and judicial order (i.e. excessive length of proceedings, lack of an effective remedy, etc.), which concern vulnerable and non-vulnerable groups alike. Nonetheless, an easily identifiable string of cases exposes national judges’ resistance to adequately scrutinise domestic laws and administrative practices as far as the rights of particular disempowered communities are concerned.

With the aim of investigating whether ECtHR jurisprudence enhances rights protection in Greece, in particular, the rights and liberties of individuals from minorities and other vulnerable groups, this chapter is structured as follows. Part 2 offers a brief account of the domestic judicial mechanisms of human rights review and examines the status the Convention has assumed in the national legal order and the interest it has generated in the academic and legal community. The objective is to properly place the Convention in the national legal context and provide an overview of the peculiarities of the Greek legal system. Coupled with established domestic perceptions about human rights protection, these exert a strong influence on litigation processes by vulnerable groups before the ECtHR. Focus then shifts in Part 3 to litigation patterns in Strasbourg with due attention ascribed to the rights claims raised by applicants from marginalised groups. This section also examines whether litigation before the ECtHR forms part of wider strategies in the pursuit of specific public policy reform goals. Next, emphasis is directed to the jurisprudence of the ECtHR in order to verify whether litigants actually succeed in gaining the Court’s support. The final section offers concluding remarks which explore whether ECtHR case law strongly affects the domestic judicial stance.

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1 See in this respect Article 35 of the Convention.