



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

FIRST SECTION

**CASE OF KONSTAS v. GREECE**

*(Application no. 53466/07)*

JUDGMENT  
(Extracts)

STRASBOURG

24 May 2011

**FINAL**

*28/11/2011*

*This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.*

**In the case of Konostas v. Greece,**

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

Nina Vajić, *President*,  
Peer Lorenzen,  
Khanlar Hajiyev,  
George Nicolaou,  
Mirjana Lazarova Trajkovska,  
Julia Laffranque, *judges*,  
Spyridon Flogaitis, *ad hoc judge*,

and Søren Nielsen, *Registrar*,

Having deliberated in private on 3 May 2011,

Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 53466/07) 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, Mr Dimitrios Konostas (“the applicant”) on 25 November 2007.

2. The applicant was represented by Mr Y. Ktistakis, a lawyer practising in Athens. The Greek Government (“the Government”) were represented by their Agent, Mr M. Apeossos, Senior Adviser, State Legal Council, Mrs O. Patsopoulou, Adviser, State Legal Council, and Mrs S. Trekli, Legal Assistant, State Legal Council.

3. The applicant alleged, in particular, that there had been a violation of his rights under Articles 6 § 2 and 13 of the Convention.

4. On 14 May 2009 the President of the First Section decided to give notice of the application to the Government. Under the provisions of Article 29 § 1 of the Convention, it was also decided that the Chamber would rule on the admissibility and merits of the application at the same time.

5. Mr Christos Rozakis, the judge elected in respect of Greece, was unable to sit in the case. The Government accordingly appointed Mr Spyridon Flogaitis to sit as an *ad hoc* judge.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1946 and lives in Athens.

*v. Germany*, no. 10282/83, Commission's report of 9 October 1985, Decisions and Reports (DR) 31, p. 11, § 49, and *Nölkenbockhoff v. Germany*, no. 10300/83, Commission's report of 9 October 1985, DR 31, p. 12, § 45).

36. The Court also reiterates that the Convention must be interpreted in such a way as to guarantee rights which are practical and effective as opposed to theoretical and illusory (see, for example, *Artico v. Italy*, 13 May 1980, § 33, Series A no., and *Capeau v. Belgium*, no. 42914/98, § 21, ECHR 2005-I). Accordingly, and in the light of the foregoing, it considers that the presumption of innocence cannot cease to apply in appeal proceedings simply because the accused was convicted at first instance. To conclude otherwise would contradict the role of appeal proceedings, where the appellate court is required to re-examine the earlier decision submitted to it as to the facts and the law. It would mean that the presumption of innocence would not be applicable in proceedings brought in order to obtain a review of the case and have the earlier conviction set aside.

37. The Court must nevertheless examine whether the remarks referring to the applicant's conviction were made in such circumstances and expressed in such a manner that they might be considered capable of affecting the judgment of the court before which the case was pending. In other words, the Court will seek to establish whether the remarks concerned gave the impression that the authorities who made them had prejudged the re-examination of the case by the competent court.

(β) Respect for the principle of the presumption of innocence

38. In the instant case the Court notes that the remarks in question were made by the Prime Minister and two of his ministers – that is to say, by three of the highest representatives of the State. The Court considers that these high-ranking officials were duty-bound to respect the principle of the presumption of innocence (see *Y.B. and Others v. Turkey*, nos. 48173/99 and 48319/99, § 43, 28 October 2004). What is more, the remarks were made when the proceedings were still pending on appeal. In addition, the Athens Assize Court had ordered the suspension of the prison sentence imposed on the applicant until the court of appeal gave judgment (see *Nölkenbockhoff*, cited above, § 46). This means that although the applicant was convicted at first instance, the principle of the presumption of innocence still applied in his case.

- Whether the applicant was identifiable as the subject of the remarks in question

39. As regards the remarks made by the Deputy Minister of Finance, the Court observes that his intention, in the context of a parliamentary debate, was to criticise the Socialist Party for remaining in touch with the people implicated in the Panteion case. The Court notes in particular that the