

## **The Administrative Judge Faced with Continuous Challenges**

- Aspects of the influence of the ECtHR jurisprudence  
on the Hellenic Council of State
- The role of ACA in view of the great transformations  
of European societies

*Michail Pikramenos*

*President of the Hellenic Council of State*

*President of ACA -Europe*

*Professor of Public Law*

*Aristotle University of Thessaloniki*

My speech has two levels corresponding to the titles I bring to the event program. As president of the Hellenic Council of State I will speak for the challenges that arise in view of the jurisprudence of ECtHR and I will describe shortly the example of my Court. As president of ACA I will refer the most important challenges in view of the great transformations of the European societies and I will present grosso modo the priorities of the Hellenic Presidency the next two years. The above levels are closely connected because they highlight our common European path.

### **I. Aspects of the influence of the ECtHR jurisprudence on the Hellenic Council of State**

#### **a) The “procedural formalism” of the national judge**

From its inauguration in 1929 the Greek Council of State exercised a highly fertile practice of judicial law-making in the field of substantive administrative law alongside a particularly creative interpretation of constitutional provisions under the 1975 Constitution. However, during all those decades and up until today, the Court displayed a tendency toward what has been described as “procedural formalism”. In other words, procedure, instead of serving as a tool for the enforcement of substantive law, is transformed into an elaborate technique that frequently leads to the dismissal of legal remedies and actions.

There are numerous causes of this “proceduralism”. It functions, in part, as a defensive response to the heavy workload of the courts. It also reflects a lack of judicial empathy in certain quarters of the judiciary, in the sense of failing to perceive the social consequences of refusing to enter into the

substance of disputes. Finally, one might argue that there exists a tacit incapacity among certain judges to address complex legal questions directly.

The contribution of the ECtHR was decisive in changing the way procedural rules were interpreted and applied by Greek courts. Our institutional precedent shows that prevailing views within the judiciary rarely change purely from internal causes, without some external influence. The largely conservative features of the judicial system and the self-entrapment of the courts within established precedents makes an anti-formalist shift from within particularly difficult.

#### **b) The institution of the trial and restrictions on access to a court**

The trial, in a broad sense, is the institution through which the application of legal rules in social life is ensured. It consists of a set of legally regulated actions by judicial bodies and litigants, designed to ensure an authoritative ruling on the applicable legal situation, as well as to compulsorily adjust reality to that ruling.

Another purpose is legal certainty, which operates on two levels: at the level of the specific dispute, by its final resolution and the restoration of social peace to the extent that it was disrupted by the dispute's emergence; and, at a broader level, through the very existence of the trial as an institution, which strengthens society's confidence in the application of legal rules and reinforces the sense of security experienced by citizens within the legal order.

At yet another level, the trial contributes to the development of the law by clarifying legal questions. With the publication of judicial decisions, the intellectual work produced within the trial becomes accessible to the wider public, offering material for scholarly analysis and public debate.

According to the consistent case law of the ECtHR, the core of the right of access to a court lies in the ability to submit a claim before a court that has jurisdiction and competence to examine its legal and factual merits and to issue a binding decision resolving the dispute. The right of access to a court, guaranteed in Article 6 of the ECHR, as one of the expressions of the right to a fair trial, is not absolute and is subject to limitations, that are implicitly accepted and particularly concern admissibility requirements.

This is because, by its very nature, the right requires regulation by the state, which enjoys a margin of appreciation in this matter. However, any limitations may not restrict the exercise of the right to such an extent that its very essence is impaired and they must pursue a legitimate aim and there must be a reasonable proportionality between the measures employed and the objective pursued.

In cases concerning Greece, the ECtHR has repeatedly found a violation of this right, finding that restrictions imposed on the applicants' right of access to a court were disproportionate to the purposes pursued. Greece has been condemned in several such cases, including those where a legal remedy was dismissed as inadmissible due to a minor procedural omission in its drafting or filing.

### **c) Reasonable time as part of fair trial**

Article 20 (par. 1) of the Greek Constitution and Article 6 (par. 1) of the ECHR together form a unified framework, of heightened normative force, for the exercise of the individual right to judicial protection in its various manifestations, as shaped by the case law of national courts and the ECtHR. There are, however, certain differences between these provisions. In particular, Article 6 (par. 1) of the ECHR additionally guarantees the right to have a case concluded within a reasonable time. This right does not arise from the literal wording of the provisions of the Greek Constitution, nor had our national courts developed, as a distinct aspect of the right to judicial protection, the requirement that proceedings must be completed within a reasonable time. Today, the temporal element is central to the right to judicial protection: given the accelerating pace of social and economic life, the reasonable duration of proceedings is decisive for the citizen's real benefit from the judgment ultimately issued. In this way, judicial protection is not emptied of practical meaning; it is effective because it is afforded at a time and in a manner that truly secures the administration of justice.

The ECtHR has an extensive case law on the reasonable duration of proceedings, issuing a series of condemnations against states that violated this specific right. The Court has emphasized the Convention's commitment to the proper administration of justice without delays that undermine its effectiveness and credibility and, ultimately, give rise to situations comparable to a denial of justice. The issue has arisen repeatedly in Greek cases, with numerous condemnations finding excessive length of proceedings—most acutely in administrative justice, but also in civil and criminal justice.

### **d) The importance of the “filter” for the Council of State and the EctHR**

In recent decades, the administrative justice system has tended to limit appeals and cassations, before the Council of State, to reduce incoming cases in light of significant delays. In 2010, a new admissibility requirement was legislatively introduced for these two remedies.

Given the Court's basic function to ensure unity of case law an application for cassation is admissible only when the required specific allegations are made. By relieving the Court from overload (which undermines the rule of law and the protection of constitutional rights) and discouraging dilatory cassations lacking serious legal issues, the filter enables the Court to exercise its supreme-court functions where most needed; serious issues can still reach it through a *cassation in the interest of the law*, which remains unaffected.

The ECtHR has assessed whether this admissibility requirement is compatible with Article 6 of the ECHR and held that it is not contrary to the Convention for a supreme court to reject an appeal by referring to the statutory screening provisions where the issues raised are not of particular importance

or the appeal has little prospect of success. Article 6 does not require detailed reasoning in a decision by which an annulment court rejects an appeal as lacking prospects under a specific statutory filter. More generally, under Article 6 the ECtHR has held that Supreme/Constitutional/last-instance courts are not obliged to provide detailed reasons when refusing to consider an appeal at a filtering stage.

### **e) Divergent perspectives of the ECtHR and the Council of State and the need for mutual convergence**

The ECtHR's influence on national jurisprudence is immensely valuable. It enables domestic judges to view issues through a broader lens that reflects the principles and values of a shared European legal culture, and to move beyond traditional approaches that can lead to formalistic or unduly harsh outcomes. Even when a national court disagrees with Strasbourg, it can reformulate its position with new arguments, thereby prompting the ECtHR to study those arguments and to refine its own responses; this dynamic may lead to fresh syntheses. In this way, a fruitful dialogue emerges—serving citizens, institutions, fair trial rights, and democracy itself in the sensitive field of fundamental rights, where constitutional and international norms of superior force are interpreted and applied to protect individuals from state arbitrariness.

For the Council of State in particular, the ECtHR's case law—especially since the 1980s—has contributed to more cogent resolution of many issues, often procedural, thereby reinforcing the progressive and qualitative profile of the supreme administrative court built up since its early years. At the same time, as the foregoing shows, ECtHR case law has also generated challenges for the Council's organization and functioning. Such problems can be addressed through institutional dialogue between the two courts: either via a retrial application before the Council of State following an adverse ECtHR judgment, or by submitting a request for an advisory opinion to the ECtHR in the context of a pending case that raises questions of Convention interpretation.

## **II. The role of ACA in view of the great transformations of European societies**

ACA-Europe is a European association composed of the Court of Justice of the European Union as well as the Councils of State and the Supreme administrative jurisdictions of each of the members of the European Union. The objectives of ACA-Europe are to obtain a better understanding of EU law by the judges of the Supreme Administrative Courts across Europe and a better knowledge of the functioning of the other Supreme Administrative Courts in the implementation of EU law; to improve the mutual trust between judges of the Supreme Administrative Courts; to foster an effectively and efficiently functioning of administrative justice in the EU; to provide exchange of ideas on

the rule of law in the administrative judicial systems and, finally, to ensure access to the decisions of the Supreme Administrative Courts implementing EU law.

There is a reality that we all experience: our societies are confronted with unprecedented and complex challenges, stemming from:

- The impact of human activities on the climate and the environment;
- Technological developments;
- Social and economic inequalities;
- Need for effective public finance management;
- Need for effective public governance.

These challenges are unfolding under increasingly intricate geopolitical conditions in both Europe and the wider world.

Administrative courts -and above all the Supreme Administrative Jurisdictions by virtue of their institutional weight- are inevitably at the forefront of the relevant transformations. They are called upon to adjudicate disputes arising from public authority actions or omissions that are deeply interwoven with these challenges.

Administrative judges today face novel questions and dilemmas, which call for reflection on several key issues:

- Are our traditional judicial tools and methods -concerning the conditions of access to justice, the procedural norms, the interpretation and application of substantive rules in the matters in question, the scope and intensity of the judicial review, the enforcement of the decisions handed down by the courts and the respect of *res judicata*- still adequate in this new context?

The Hellenic Presidency of ACA will focus in the above complex challenges

### **III. JUDICIARY-DEMOCRACY AND PUBLIC CONFIDENCE**

The confidence of the public in an independent Judiciary is of paramount importance for a vibrant and functional democracy. Lack of public confidence in the Judiciary has the potential of eroding the moral authority of the judiciary. Our judgements are obeyed because of our public confidence generating moral authority. If we lose it then we are finished. Accountability is therefore important because it is a foundational value of our democracy which is applicable to all, including the Judiciary.

The European Court of Human Rights ("ECtHR") has declared the prominent place among State organs that the judiciary occupies in a democratic society. The Court has emphasised the special role in society of the judiciary, which, as the guarantor of justice, a fundamental value in a law-governed State, must enjoy public confidence if it is to be successful in carrying out its duties and in this framework judges have more duties and responsibilities than the ordinary civil servants.