

Refusal to lift defence minister's immunity denied an MP access to a court

In today's **Chamber** judgment¹ in the case of [Bakoyanni v. Greece](#) (application no. 31012/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned Ms Bakoyanni's complaint that in 2018 she had not been able to follow through with a criminal complaint against the then Minister of Defence for defamation because the Greek Parliament had refused to lift his immunity. She lodged a complaint against the Minister after he had posted a tweet criticising her attending the inauguration ceremony of the Turkish President.

The Court held in particular that the refusal to lift the immunity of the Minister had directly hindered Ms Bakoyanni's access to a court and therefore her ability to protect her reputation.

Principal facts

The applicant, Theodora Bakoyanni, is a Greek national who was born in 1954 and lives in Athens. She is a member of parliament.

In 2018 Ms Bakoyanni accepted an invitation to attend the inauguration of the President of Türkiye. On the same day as she accepted, P.K., the then Minister of Defence, published a tweet that was heavily critical of Ms Bakoyanni.

Ms Bakoyanni brought a criminal complaint, alleging verbal abuse and libel through the media.

As P.K. was a member of parliament, the case was referred to the Committee on Parliamentary Ethics, ultimately with a view to lifting his immunity, which would allow prosecution. P.K. pointed out to the Committee that he had been defence minister at the time, and so had special protection under the Constitution (Article 86) and the relevant parliamentary regulations.

In its decision, the Committee stated that criminal proceedings could only be initiated by Parliament against P.K. by virtue of his status at the time of the alleged events. Parliament ultimately did not do so.

Ms Bakoyanni took a civil case against P.K., alleging posting of libellous tweets. In August 2019 the First-Instance Court of Athens found for her, and ordered payment of 5,000 euros (EUR) in damages. The court found that P.K.'s comments had gone beyond the reasonable limits of his right to criticise – even in a severe tone – the decision to attend the inauguration of the Turkish President, and had reached the point of attacking her character and damaging her honour. He had infringed her personality rights. However, the court refused to make the judgment public in accordance with the relevant legislation.

A civil appeal is pending before the First-Instance Court of Athens.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), Ms Bakoyanni complained that the Parliament's refusal to lift P.K.'s immunity had meant she had been denied access to a court.

The application was lodged with the European Court of Human Rights on 3 June 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Péter **Paczolay** (Hungary),
Alena **Poláčková** (Slovakia),
Lətif **Hüseynov** (Azerbaijan),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden) and,
Michail-Konstantinos **Stathopoulos** (Greece), *ad hoc Judge*,

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

The Court reiterated that the right of access to a court can be subject to limitations – such as parliamentary immunity – which are proportionate and which have a legitimate aim. It noted that pursuant to Article 86 of the Constitution Parliament had exclusive jurisdiction to initiate criminal proceedings against a minister, within a brief time-limit.

Ms Bakoyanni had made a criminal complaint with a view to protecting her reputation. Key to this would have been publication of the judgment in the case, which in respect of private individuals in Greece had been possible only in criminal cases. The impossibility to initiate criminal proceedings had denied her the chance to protect her reputation.

Furthermore, the Court noted that P.K.'s conduct with regard to Ms Bakoyanni – an allegedly libellous tweet – had not been in any way related to his activities in his roles as a minister or a parliamentarian.

The Court therefore concluded that the refusal to lift P.K.'s immunity had hindered Ms Bakoyanni's access to a court, in violation of Article 6 § 1 of the Convention.

Just satisfaction (Article 41)

The Court held that Greece was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage, and EUR 1,240 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.