

# **GREECE**

Prof Dr Eugenia Dacoronia  
National and Kapodistrian University of Athens

## **AP 20 February 2018, no 370, NoV 66 (2018), 254**

- Principle of Proportionality
- Determination of the Amounts to be Granted as Non-Pecuniary Damage

## **Brief Summary of the Facts**

- In 2010, during a strike and demonstration, unknown persons broke the glass pane of the façade of bank D and threw improvised explosive-incendiary devices (bomber bombs) into the interior.
- As an outcome, a large fire broke out and the whole building was filled with dense smoke in a short period of time.

- This had as a consequence:
- Bank employee A, 32 years old and in the 4<sup>th</sup> month of her pregnancy, died from carbon monoxide poisoning.
- 19 other employees, who managed to escape, suffered from having inhaled smoke and toxic gas and had to be hospitalised; one of them also broke three ribs when trying to escape.

- Above employees filed an action against the bank seeking compensation for their non-pecuniary damage.
- Members of A's family also sought compensation for their grief and sorrow for the loss of their beloved relative.
- They founded their claims on the bank's alleged omissions to take all necessary safety measures in order to avoid the detrimental results of the terrorists act and the fire.

- The Court of Appeal found D and its representatives liable and awarded:
  - € 250,000 to each of A's parents,
  - € 350,000 to her husband,
  - € 150,000 to her sister and
  - € 80,000 to each of her parents-in-law and
  - amounts ranging from € 25,000 to € 60,000 (€ 30,000 on average) to each of the other employees (P1-P19), depending on the conditions of the injury of each

## **Judgment of the Court**

- The Court of Cassation found that the Athens One-Member Court of Appeal, with its judgment, exceeded the extreme limits of its discretion when determining the amount, which is reasonable in the specific case as compensation, both for the restoration of the mental suffering of each member of A's family as well as for the compensation of the non-pecuniary damage of each of the other Ps.

- And this because, although the conditions of A's death and the injury or mental disruption of the others at the time of their work were indeed tragic and unpredictable for bank employees, they were, however, not more intense than those under which the death or injury of other people occurs in accidents in everyday reality, in an equally sudden and abhorrent way.

- And the fact that the case in question causes indignation to the average social person because a ‘blind’ and irrational terrorist act hurts simple employees, who have not given any cause to the perpetrators’ actions (except possibly working on a day of a general strike), cannot justify the high increase in the amount of money that the employer or its representatives have to pay, rather than the unknown terrorists.

- Consequently, according to the Court of Cassation, the amounts awarded in the present case were not those usually awarded by the courts in the case of a person's death or in the case of slight injury from negligence, even under extremely painful conditions, but are considered to be emotionally inflated.
- Accordingly, there has been a breach of the principle of proportionality as regards the extent of the amounts awarded and as regards the equilibrium which the award of such amounts should ensure between the beneficiaries' benefit and the burden of the persons obliged to pay.

## **Commentary**

- The Court of Cassation, dealing with a case where an act of terrorism is involved, accepts that there can be liability of persons other than the terrorists when those persons could have prevented or reduced the damage caused by the terrorists' act.
- What is worth mentioning in the present case is that the Court found that the amounts awarded for non-pecuniary damage are sentimentally driven and too high for the reasons mentioned herein above.
- This brings forward the issue of who and to which extent is to bear the loss when such terrorist acts take place.