

## **Fundamental Rights**

### **The Right to Judicial Protection**

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### **The Right to Judicial Protection**

#### **The Concept of Judicial Protection and Its Roots in Justice and the Rule of Law**

The idea of judicial protection stems from the principles of justice and the rule of law. In Plato's dialogue *Protagoras*, he mentions how, after humans formed communities, they began to wrong each other. Fearing humanity's potential extinction, Zeus sent Hermes to bring humans shame and justice, enabling them to organize their cities and live in harmony. Hermes then established a law ruling that anyone incapable of feeling shame and justice should be removed, like a disease that harms the city.

Aristotle, in his works, particularly the *Nicomachean Ethics* and *Politics*, argued that justice is the foundation of political society. He specifically talks about "corrective justice," which requires judges to resolve disputes and protect citizens' rights. His work highlights the need for an independent justice system capable of shielding people from abuses and arbitrariness.

The right to judicial protection is very old, going back to the first human communities, and is closely linked to human nature. According to natural law theorists, it is a right that belongs to people simply because they are human. Others believe this right is based on the principle of respecting human dignity, while some see it as grounded in the rule of law, which forms the basis of the constitutional system.

#### **Constitutional Provision of the Right to Judicial Protection**

In Greece, the right to judicial protection is enshrined in Article 20, paragraph 1 of the Constitution, and mentions that: "*Everyone has the right to receive legal protection*

*from the courts and to present their views regarding their rights or interests, as provided by law.”*

The Greek constitutional legislator was influenced by Article 19(4) of the German Basic Law (Constitution) of 1948, which states: “Anyone whose rights are violated by public authority has the right to seek judicial relief. Jurisdiction lies with the ordinary courts unless otherwise specified.” Additionally, the Greek constitutional legislator was influenced by Article 103(1) of the German Basic Law, which provides that “Everyone shall have the right to be heard in court according to the law”

### **Similar Provisions Ensuring the Right to Judicial Protection**

Similar provisions guaranteeing the right to judicial protection are found in Articles 6 and 13 of the European Convention on Human Rights (ECHR), Article 47 of the Charter of Fundamental Rights of the European Union, and Article 10 of the Universal Declaration of Human Rights by the United Nations.

Article 6 of the European Convention on Human Rights (ECHR), to which Greece is a party, strengthens judicial protection by ensuring the right to a fair trial. It provides specific safeguards, including the independence of the judiciary, the right to be heard, and the administration of justice within a reasonable time.

### **The legal reservation**

The right in Article 20(1) of the Constitution is exercised “as defined by law.” This reservation, typical for a constitutional provision, relates to “how” the right will be exercised, not “whether” it can be exercised. This is because the Constitution provides a general framework for organizing and exercising state authority while ensuring fundamental rights.

### **Subject of judicial protection**

The right to judicial protection applies to any individual, regardless of nationality, origin, or other characteristics, as well as any legal entity, association of people, or group of assets, whether formally recognized in Greek law or not, and regardless of where they are based. International legal entities are also covered, even if Greece is not directly involved in them. Essentially, it is enough that the person or entity

seeking judicial protection has a permanent or temporary connection to the Greek legal system.

### **Object of judicial protection**

The object of judicial protection includes the rights and lawful interests of citizens, as long as these rights or interests are based on the law. Purely economic interests are not included. As an exception to this rule, governmental acts are not subject to judicial review. However, even in such cases, judicial protection may apply if these acts violate the Constitution or the law, as this establishes civil liability for the state.

### **Scope of judicial Protection**

Legal protection refers to any form by which the courts may provide protection, as specifically defined by the applicable procedural law. This means that Article 20 of the Constitution includes a directive to the legislator to establish the procedural framework—namely, the legal remedies and procedures—through which full, timely, and effective judicial protection is ensured.

#### **1. Full Judicial Protection**

Judicial protection is considered full when it covers any dispute or case arising in legal life and is provided through recognized procedural forms, such as adjudicative proceedings, provisional judicial protection (interim measures), enforcement of judgments, and, more broadly, compliance with judicial decisions in any manner.

There is, however, debate over whether the right to judicial protection also implies a constitutionally guaranteed right to appeal or if two levels of jurisdiction are constitutionally required. It is argued that the possibility of judicial review may be restricted by law, provided this does not fundamentally undermine the right to fair and effective judicial protection.

#### **2. Timely Judicial Protection**

For judicial protection to be meaningful, it must be provided in a timeframe and manner that genuinely ensures the delivery of justice. This means it must be granted within a reasonable time. Excessive delay effectively constitutes a denial of judicial protection. To this end, the State is required to organize its judicial system so that

courts can meet the mandates of Article 20(1) of the Constitution and Article 6 of the ECHR, including the obligation to adjudicate cases within a reasonable period.

When judicial protection is not provided within a reasonable time, the affected individual has the right to seek fair satisfaction from the court responsible for the delay.

The institution of provisional judicial protection (interim measures) plays an essential role in providing timely judicial protection. These measures aim to urgently address a specific risk or fulfill an immediate need before the issuance of a final or enforceable decision in the adjudicative process

### **3. Effective Judicial Protection**

Protection is effective when it ensures the most potent and practical form of legal relief, specifically the possibility of enforcement. The constitutional guarantee of the right to judicial protection would be meaningless without the institution of enforcement, which involves creating the necessary conditions to align real-life outcomes with the court's ruling and to resolve any disputes arising during the enforcement process. Effective judicial protection includes not only the enforcement procedure itself but also measures that ensure compliance with enforceable court decisions.

#### **The Right to Judicial Protection in Light of the ECHR**

The right to judicial protection consists of three connected components:

- **Access to the Court:** An individual must have the ability to bring a case before the court to seek justice. The state must provide a fair and accessible judicial system, ensuring citizens have the necessary assistance and information to understand their rights and how to claim them. Factors such as court fees or geographic distance from courts should not pose barriers.
- **Fair Trial:** Proceedings must be conducted by an impartial and independent court, with the right to a hearing being fundamental. Justice should be delivered within a reasonable time, as excessive delays can render the right meaningless. A fair trial includes equality between the parties, the accused's

right to defend themselves and present evidence, and the presence of independent judges free from executive pressure.

- **Enforcement of Court Decisions:** A right is fully recognized only when the court decision upholding it is effectively enforced. Here, the state must have mechanisms in place to ensure the implementation of decisions, especially when the opposing party is a state authority.

### **Judicial Protection Bodies**

In Greece, judicial protection is provided by courts composed primarily of regular judges who enjoy functional and personal independence. Bodies of voluntary arbitration and administrative bodies that offer protection following internal appeals are not considered courts. Nor are those bodies that, despite their name, resolve conflicts of interest rather than adjudicate legal disputes (e.g., administrative arbitration courts, disciplinary councils, and committees)

### **Judicial Protection against the Government, the Parliament and the Courts**

#### **1. Against the Government**

The right to judicial protection primarily applies to the legal relations of individuals or legal entities, whether between each other or against the executive branch, in the exercise of its powers. When the executive acts not as an administrative body but through governmental acts, these acts are beyond judicial review. Their exclusion from judicial oversight is considered an acceptable limitation of the right to judicial protection.

**Governmental acts**, which are actions by the executive branch without an administrative character, are exempt from judicial review. These acts concern matters of high policy, such as foreign policy decisions, national security issues, and references to international treaties, where judicial oversight is deemed inappropriate.

The exclusion of governmental acts from judicial review is considered an acceptable limitation on the right to judicial protection. This limitation is permitted, as actions

related solely to the country's political direction are unsuitable for judicial intervention, which might otherwise influence or restrict governmental discretion.

## **2. Against the legislative body**

Civil liability of the state towards individuals may arise from acts or omissions in the legislative process, whether by legislative bodies or administrative bodies exercising regulatory powers. This liability is established when the act or omission of the legislative body conflicts with higher legal rules, such as the Constitution, EU law, the provisions of the ECHR, and international conventions.

## **3. Against the Courts**

Generally, the Constitution does not guarantee judicial protection against the courts themselves. However, legislation provides for legal remedies against judicial decisions, the right to file a claim for judicial misconduct, and civil liability of the State for clear errors by judicial authorities or for blatant violations of EU law.

### **The Right to Be Heard and Present Evidence**

Article 20 of the Greek Constitution safeguards the right to be heard and the right to present evidence, both essential procedural rights. These rights are closely linked to the broader right to judicial protection, as a fair legal process is impossible without the right to present one's case and evidence. The right to present one's views before the court means the right to put forth and prove (or disprove) the facts supporting one's claim. Therefore, the state is obliged to establish the necessary procedural framework and provide the appropriate legal remedies so that, if a party was not lawfully given the opportunity to be heard, they can ensure their voice is heard in court.

### **Limitations on the Right to Judicial Protection**

The provision of judicial protection requires the state to establish and maintain a complex and costly judicial system. Although the right to judicial protection is constitutionally guaranteed, it is not absolute and may be subject to certain limitations:

- **Cost of Judicial Protection:** Requiring court fees or charges to access justice can restrict the right to judicial protection. If these fees are excessively high, they may indeed limit access to justice. However, in most legal systems, payment of fees is a prerequisite for accessing the courts, aiming to discourage unnecessary legal actions.
- **Time Limits for Filing Claims:** Laws impose deadlines for filing claims in court and set statutes of limitations on claims. If these deadlines or limitations expire, the right to bring a claim is lost. This restriction aims to maintain stability in legal relationships and ensure timely resolution of disputes.

### **Connection with Other Constitutional Principles**

The right to judicial protection is a fundamental principle of Greek constitutional law, enshrined in Article 20 of the Constitution. Its connection with the principles of the rule of law, separation of powers, judicial independence, and equality is inseparable and essential for the functioning of our legal system.

#### **1. The principle of the rule of law**

The principle of the rule of law ensures that all state actions are subject to legal rules and oversight by independent courts. Article 20 of the Constitution enshrines each individual's right to seek legal protection from the courts, allowing them to present their views on their rights or interests as defined by law.

This right is a cornerstone of the rule of law, as it empowers citizens to seek justice to protect their rights and to challenge the legality of state actions.

#### **2. The principle of the separation of powers**

The principle of the separation of powers, as defined in Article 26 of the Constitution, establishes that:

- Legislative power is exercised by Parliament and the President of the Republic.
- Executive power is exercised by the President of the Republic and the Government.

- Judicial power is exercised by the courts, with their decisions executed in the name of the Greek People.

The right to judicial protection reinforces this principle by allowing citizens to turn to the judiciary for dispute resolution and for reviewing the legality of actions by the executive and legislative branches. This ensures a balance and system of checks among the powers, preventing overreach and abuse of authority.

### **3. Judicial independence**

Judicial independence is essential for the effective provision of judicial protection. Article 87 of the Constitution stipulates that judges enjoy functional and personal independence in performing their duties, being subject only to the Constitution and the laws. This independence ensures that judicial decisions are made without external influence, allowing citizens to trust the judiciary in safeguarding their rights. Judicial independence is closely connected with the principles of the rule of law and the separation of powers.

### **4. The principle of equality**

The principle of equality is enshrined in Article 4 of the Constitution, which states that all Greeks are equal before the law. The right to judicial protection incorporates this principle, ensuring that every individual has equal access to justice, regardless of gender, race, religion, or social status. This means that all citizens can turn to the courts to protect their rights without discrimination, thereby strengthening trust in the legal system and promoting social justice.

In summary, the right to judicial protection is deeply connected to the fundamental principles of the Constitution, ensuring the proper functioning of the rule of law and the protection of citizens' rights.