



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

THIRD SECTION

CASE OF KARAKASIS v. GREECE

(Application no. 38194/97)

JUDGMENT

STRASBOURG

17 October 2000

FINAL

17/01/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form.

In the case of Karakasis v. Greece,

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

Mr J.-P. COSTA, *President*,

Mr C. ROZAKIS,

Mr L. LOUCAIDES,

Mr P. KÜRIS,

Mrs F. TULKENS,

Mr K. JUNGWIERT,

Sir Nicolas BRATZA, *judges*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 November 1999 and on 26 September 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 38194/97) against Greece lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Greek national, Mr Charilaos Karakasis (“the applicant”), on 19 June 1997.

2. The applicant, who had been granted legal aid, was represented by Mr K. Mavroidis, a lawyer practising in Athens. The Greek Government (“the Government”) were represented by Mr M. Apessos, Assistant Legal Adviser (*paredros*) at the State Legal Council (*Nomiko Simvulio tu Kratus*), Delegate of the Agent and Mrs V. Pelekou, Legal Assistant (*dikastikos andiprosopos*) at the State Legal Council.

3. The applicant alleged, in particular, that he had not been heard in connection with his entitlement to compensation for his detention on remand and that the relevant decision did not contain reasons.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 30 November 1999, the Chamber declared the application partly admissible, deciding to examine the Government’s

argument that the applicant had not exhausted domestic remedies together with the merits.

7. The applicant filed observations on the merits (Rule 59 § 1). The Government invited the Court to reject the application on the ground that it had not been submitted within the six-month time-limit of Article 35 § 1 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 25 October 1990 and 9 November 1990 criminal complaints were lodged against the applicant for instigation to fraud and for issuing checks for the payment of which there were no adequate funds. The prosecutor instituted criminal proceedings against him.

9. In 1994 the investigating judge ordered the applicant's provisional detention (warrant No. 22/94). However, the applicant evaded arrest.

10. On 5 August 1994 the indictments chamber of the first instance criminal court (*simvulio plimmeliodikon*) of Athens decided to commit the applicant for trial to the three-member Court of Appeal (*trimeles efetio*) of Athens, sitting as a first instance court, on the above charges. The chamber confirmed the investigating judge's warrant concerning the applicant's detention.

11. On 2 February 1995 the indictments chamber decided to commit the applicant for trial on a number of supplementary charges.

12. The applicant was arrested on 2 September 1995. Until 30 October 1995 the applicant was deemed to be serving a sentence that had been imposed on him for unrelated offences in 1989. As a result, the applicant's detention on remand on the fraud and other charges mentioned above officially started on 30 October 1995.

13. On 17 July 1996 the applicant applied for his provisional release. On 22 August 1996 the indictments chamber of the Court of Appeal of Athens rejected his application.

14. On 2 September 1996 the applicant appeared, together with MB, JK and DK, before the three-member Court of Appeal of Athens. He was represented by counsel who also acted for MB and JK. The trial lasted until 3 September 1996 when the court heard the final submissions of the parties on the question of guilt of the applicant and his co-defendants. Then the court withdrew for deliberations in the course of which it decided to acquit the applicant and convict MB and JK.

15. The relevant decision was pronounced and then the court heard submissions on the sentences to be imposed on MB and JK. Counsel who represented the applicant as well as MB and JK was heard in this connection. The court withdrew for deliberations in the course of which it decided on the penalties to be imposed. It also decided that “the applicant should not be compensated for the time he spent in detention on remand”. The relevant decision was pronounced on the same day, i.e. on 3 September 1996.

16. However, its text was finalised (*katharographi*) on 9 December 1996. The applicant was informed of this development later on and obtained a certified copy on 28 July 1997.

II. RELEVANT DOMESTIC LAW

17. The Code of Criminal Procedure provides as follows:

Article 533 § 2

“Persons who have been detained on remand and subsequently acquitted ... have the right to request compensation ..., if it has been established in the proceedings that they did not commit the criminal offence for which they have been detained on remand.”

Article 535 § 1

“The State does not have any obligation to compensate a person who ... has been detained on remand if the latter, intentionally or by gross negligence, was responsible for his own detention.”

Article 536 §§ 1 and 2

“Upon an application submitted orally by the person who has been acquitted, the court which heard the case shall decide on the State's obligation to pay compensation in a separate decision issued at the same time as the verdict. However, the court may also issue such a decision *proprio motu* ...

The decision regarding the obligation of the State to pay compensation cannot be challenged separately; it is, however, quashed when the decision on the principal issue of the criminal trial is reversed.”

Article 537 §§ 1 and 2

“The person who has suffered prejudice may request compensation at a later stage before the same court.

In these circumstances, the application must be submitted to the public prosecutor of this court strictly within forty-eight hours from the pronouncement of the judgment in open court.”

Article 539 § 1

“After it has been decided that the State must pay compensation, the person entitled thereto may bring his claim before the civil courts, which may not re-examine the existence of the State's obligation.”

Article 540 § 1

“Persons who have been unfairly ... detained on remand must be compensated for any material prejudice they have suffered as a result of their ... detention. They must also be compensated for moral damage”

THE LAW**I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS**

18. Instead of submitting observations on the merits, the Government invited the Court to reject the application on the ground that it had not been submitted within the six month time-limit of Article 35 § 1 of the Convention. They submitted that the applicant was wrong in arguing that the public prosecutor could have appealed in cassation against the decision refusing him compensation. They also submitted that it was hard to believe that the applicant had been unable to get a copy of the court of appeal's decision for a period of six months.

19. The Court recalls that under Article 35 § 4 of the Convention it may reject an application as inadmissible at any stage of the proceedings. However, in the present case it finds no reason to depart from its decision of 30 November 1999 finding that the applicant had complied with the six-month time-limit and declaring the application admissible. The Court, therefore, rejects the Government's relevant preliminary objection.

20. The Court further recalls that it had joined to the merits the examination of the Government's objection concerning exhaustion of domestic remedies. This is, however, a matter related to the first of the applicant's complaints under Article 6 § 1 of the Convention which the Court will address in the following paragraphs.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

21. The applicant first complained that he had not been heard in connection with his entitlement to compensation for his detention on remand. Secondly, he complained that the relevant decision did not contain reasons. He invoked Article 6 § 1 of the Convention, which provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

22. The Government submitted that there existed no “civil right” to compensation for detention on remand under domestic law. In any event, they pointed out that the applicant, who was represented by counsel, could have asked, following his acquittal, to be heard on his entitlement to compensation. However, he chose not to make any submissions in this connection and the court had to address the issue *proprio motu*. The reasons for not granting the applicant compensation were related to the fact that he had in the past evaded justice. As a result, he had become himself responsible for his detention.

23. The applicant submitted that the right to compensation was by its very nature “civil”. He referred to the Court’s *Georgiadis v. Greece* judgment of 29 May 1997 (*Reports of Judgments and Decisions* 1997-III, p. 949). The applicant considered that the domestic court, before deciding on his entitlement to compensation, should have expressly invited him to develop his arguments in that connection. Finally, he pointed out that the domestic court decision did not contain any reasons. It simply refused him compensation.

24. As regards the argument drawn by the Government from the fact that no claim for compensation was ever lodged, the Court recalls that, according to Article 537 of the Code of Criminal Procedure, the applicant had the right to apply for compensation within forty-eight hours from the delivery of the judgment acquitting him in open court. However, before the expiry of this time-limit the court decided that the applicant should not be compensated. According to Article 536 of the Code of Criminal Procedure, this decision was final. As a result, the Court fails to see what useful purpose lodging a claim for compensation could have served given the Court of Appeal’s *proprio motu* ruling and its final character. It follows that there was a “dispute” for the purposes of Article 6 § 1 of the Convention (see the above-mentioned *Georgiadis v. Greece* judgment, p. 959, § 31).

25. The Court also recalls that, according to the *Georgiadis v. Greece* judgment, Article 533 § 2 of the Code of Criminal Procedure creates a “right” for a person having been detained to claim compensation following his or her acquittal; this right is of “a civil character” (*op. cit.*, p. 959, §§ 32 and 34). The Court considers that the Government have submitted nothing in the present case that would justify a departure from these conclusions. It follows that Article 6 § 1 was applicable.

26. As regards compliance with Article 6 § 1 of the Convention, the Court recalls that, according to the above-mentioned *Georgiadis v. Greece* judgment, no decision on the question of compensation should be taken without affording the applicant an opportunity to submit to the courts his arguments on the matter. A procedure whereby civil rights are determined without ever hearing the parties’ submissions cannot be considered to be

compatible with Article 6 § 1 (*op. cit.*, p. 960, § 40). Turning to the circumstances of the present case, the Court notes that on 2 September 1996 the Court of Appeal ruled on the applicant's entitlement to compensation *proprio motu* without inviting comments on his part. According to domestic law, it was not open to the applicant to challenge this ruling. It follows that there was a violation of Article 6 § 1 of the Convention in respect of the Court of Appeal's failure to hear the applicant. It also follows that the Government's objection concerning non-exhaustion of domestic remedies must be rejected.

27. As regards the applicant's complaint concerning the reasoning of the domestic court's decision on his entitlement to compensation, the Court recalls that, according to its case-law, the extent of a court's duty to give reasons may vary, *inter alia*, according to the nature of the decision (see the above-mentioned *Georgiadis v. Greece* judgment, p. 960, § 43). However, in the applicant's case the domestic court did not invoke any reasons for precluding compensation. It follows that there was also a violation of Article 6 § 1 of the Convention as a result of the absence of any reasoning in this decision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damages

29. The applicant claimed to be unable to provide any proof as to the pecuniary damage he had incurred. As for non-pecuniary damage, he claimed 200,000,000 drachmas. The Government made no comments.

30. Making its assessment on an equitable basis, the Court awards the applicant 2,000,000 drachmas for non-pecuniary damage.

B. Costs and expenses

31. The applicant, who had the benefit of legal aid, did not make any claim for costs and expenses. Accordingly, the Court does not make an award in this connection.

C. Default interest

32. According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;
2. *Holds* that there has been a violation of Article 6 §1 of the Convention in respect of the Court of Appeal's failure to hear the applicant in connection with his entitlement to compensation for his detention on remand;
3. *Holds* that there has been a violation of Article 6 §1 of the Convention in respect of the absence of any reasoning in the Court of Appeal's decision refusing the applicant compensation for his detention on remand;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, two million drachmas in respect of non-pecuniary damage;
 - (b) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and notified in writing on 17 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President