



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

SECOND SECTION

CASE OF HARALAMBIDIS AND OTHERS v. GREECE

(Application no. 36706/97)

JUDGMENT

STRASBOURG

29 March 2001

FINAL

29/06/2001

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 Haralambidis and Others v. Greece,

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

Mr A.B. BAKA, *President*,

Mr C.L. ROZAKIS,

Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,

Mr P. LORENZEN,

Mr M. FISCHBACH,

Mr A. KOVLER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 23 March 2000 and on 8 March 2001,

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

PROCEDURE

1. The case originated in an application (no. 36706/97) 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 Ioannis Haralambidis, and by two companies incorporated under Greek law, Y. Haralambidis-Liberpa S.A. and Liberba Ltd (“the applicants”), on 5 June 1997.

2. The applicants were represented by Mr H. Tagaras, a lawyer practising in Athens. The Greek Government (“the Government”) were represented by their Agent, Mr E. Volanis, President of the State Legal Council.

3. The applicant companies complained, in particular, of the failure of the authorities to provide them with the evidence they had requested and of the length of the proceedings before the administrative courts. The first applicant company also complained under Article 1 of Protocol No. 1 that, notwithstanding the failure of the authorities to provide it with certain evidence, it was ordered to pay customs duties and fines.

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 Second 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 23 March 2000 the Court declared the application partly admissible.

7. The Government, but not the applicants, filed observations on the merits (Rule 59 § 1).

THE FACTS

8. The first applicant used to be president of the board of directors and managing director of the first applicant company and manager of the second applicant company. The first applicant company, the full title of which is Yeoryios Haralambidis - Liberpa, Greek Corporation of International Transports and General Enterprises S.A. (ανώνυμος εταιρία), was incorporated under Greek law. It was set up in 1973. The second applicant company, the full title of which is Liberpa International Road Transports Ltd (εταιρία περιορισμένης ευθύνης), was also incorporated under Greek law. It was set up in 1974.

9. Between June 1980 and March 1981 the second applicant company transported cloth from outside the European Community into Greece and then to Italy. A few months later the customs authorities, suspecting that criminal offences had been committed in the course of this activity, asked for and were granted leave from the local public prosecutor to start a preliminary inquiry.

10. On 31 August 1982 and 8 August 1983 criminal proceedings were instituted against the first applicant and others for contraband, forgery and fraud against the State. The first applicant was in essence charged with bringing the cloth into Greece as goods in transit for Jordan and then changing its origin by using forged documents in order “to export” it to Italy as Greek and avoid paying customs duties. The first applicant company appeared as the Greek “exporter” of the cloth.

11. On 15 June 1984 and 22 June 1984 the customs authorities of Piraeus, considering that the first applicant in his capacity as representative of the two applicant companies had committed the customs offence of contraband, decided to impose on him fines of a total amount of 59,099,404 drachmas. Fines of a total amount of 11,738,867 drachmas were also imposed on Mr K, an employee of the second applicant company and Mr Tz, a customs broker. The customs authorities also decided that customs duties of a total amount of 21,208,456 drachmas were due for the importation of the cloth in Greece. The first applicant as representative of the two applicant companies was to be jointly and severally liable for the payment of the fines imposed on Messrs K and Tz and of the customs duties (decisions Nos. 3/83/15.6.84 and 1-5/22.6.84). The duties and fines in

question were to be recovered in accordance with the Code for the Collection of Public Revenues.

12. The first applicant and the two applicant companies immediately lodged appeals (προσφυγές) in the Administrative Court (Διοικητικό Πρωτοδικείο) of Piraeus. The court requested the competent administrative authorities to compile a case-file, which they did on 15 July 1985.

13. The applicants then tried unsuccessfully to obtain various documents concerning the transport of the cloth in question from the customs authorities.

14. On 17 May 1985 the first applicant addressed himself to the investigating judge of Piraeus asking for his assistance in this matter. The investigating judge asked the customs authorities of Piraeus to provide the documents in question. On 20 May 1985 the authorities replied that some could not be found (VOLET 2 of TIR 0413929) while others did not concern the applicants (application for a reloading permit No 973). However, the applicants had already received a letter dated 15 May 1985 from the customs authorities of Evzones to the effect that the Evzones authorities had sent to the Piraeus authorities some of the documents that the Piraeus authorities could not find.

15. In the meantime the indictments chamber of the first instance criminal court (Συμβούλιο Πλημμελειοδικών) of Piraeus decided that the first applicant should be tried by the three-member Court of Appeal (Τριμελής Εφετείο) of Piraeus, sitting as a first instance court, for forgery and fraud and by the three-member first instance criminal court (Τριμελής Πλημμελειοδικείο) of Piraeus for contraband. Mr K and two others were indicted as well. The applicant and his co-accused appealed.

16. On 25 October 1985 the indictments chamber of the Court of Appeal (Συμβούλιο Εφετών) of Piraeus decided that the applicant and the others could not be tried for contraband because the cloth in question had technically never been imported into or exported from Greece. Greece had never been its destination, it had been brought into Greece in transit and had eventually left Greece for Italy. As a result, no customs duties were due to the Greek authorities and the crime of contraband could not have been committed. Nevertheless, the chamber decided that the applicant and his co-accused should be tried for forgery and fraud.

17. The trial commenced on 7 October 1987. The applicant testified, inter alia, that “he had gone to the customs office in Prato, Italy to ask for the documents but was told that he lacked locus standi and the matter was internal”. On 8 October 1987 the three-member Court of Appeal decided to adjourn the trial in order to obtain expert evidence on the question of forgery.

18. In November 1987 there was a fire on the premises of the first instance Administrative Court of Piraeus, which, as a result, had to be relocated.

19. The applicants' appeals against the decisions of 15 June 1984 and 22 June 1984 of the customs authorities of Piraeus imposing customs duties and fines were heard on 20 June 1988, 21 November 1988 and 12 April 1989.

20. On 12 September 1988, 18 January 1989 and 31 May 1989 the three-member first instance Administrative Court (Τριμελές Διοικητικό Πρωτοδικείο) of Piraeus quashed the decisions of 15 June 1984 and 22 June 1984 of the customs authorities of Piraeus. The court considered that the first applicant had not committed the customs offence of contraband because the cloth had entered into Greece in transit and no customs duties were due to the Greek authorities. Moreover, the intention of the applicant was to defraud the Italian authorities and not to deprive the Greek authorities of income due (decisions Nos. 1534/88, 1535/88, 76/89, 77/89, 1360/89 and 1361/89). The customs authorities appealed.

21. On 6 October 1989 the third applicant company closed down its operations.

22. On 30 December 1989 the three-member Court of Appeal of Piraeus acquitted the applicant of the forgery and fraud charges.

23. On 30 September 1991 the five-member Administrative Court of Appeal (Πενταμελές Διοικητικό Εφετείο) of Piraeus, by majority, decided to uphold the customs authorities' appeal. The court considered that the effect of the first applicant's and his collaborators' actions was to change the origin of the cloth into Greek. As a result, the cloth had technically been imported into Greece. However, no customs duties had been paid and, as a result, the customs offence of contraband had been committed. The court, however, reduced the amount of the fines to be paid by the first applicant in his capacity as representative of the two applicant companies to 40,282,648 drachmas and the global fine for which the first applicant was jointly and severally liable to 48,197,414 drachmas. One judge disagreed. He considered that the contraband offence had not been committed and referred to the findings of the criminal court of appeal (decisions Nos. 1833/95, 1834/91, 1835/91, 1836/91, 1837/91 and 1838/91).

24. The first applicant and the two applicant companies appealed in cassation to the Council of State (Συμβούλιο της Επικρατείας).

25. The appeals were set for hearing by the Second Chamber of the Council of State on 26 January 1994.

26. In the meantime, on 24 June 1992, the Council of State issued decision No. 2313/92 on an appeal in cassation by the applicants concerning a fine imposed by the customs authorities on another occasion. Two of the applicants appealed against decision No. 2313/92 before the Special Supreme Court (Ανώτατο Ειδικό Δικαστήριο) on the ground that in another case the Court of Cassation (Αρείος Πάγος) had interpreted the Customs Code in a different manner.

27. On 22 June 1993 the customs authorities ordered that the first applicant should not be allowed to travel out of Greece, because of his debts to the State.

28. On 26 July 1993 the first applicant requested the public prosecutor of Piraeus to order the customs authorities to give him certain documents. The prosecutor transmitted the applicant's request to the customs authorities of Piraeus, which complied. Among the documents provided by the customs authorities were the VOLETS 2 of TIR 438216 and TIR 8630463 that the applicants had requested in 1985.

29. In 1993 the applicant also obtained certain documents concerning the transport of the cloth in question from the Italian authorities.

30. On 16 December 1993 the applicants added to their grounds of appeal in cassation the following: The Greek customs authorities had given the wrong classification to the cloth in question. As a result, the applicants had been asked to pay higher duties and fines. The applicants had been able to establish the wrong classification of the cloth on the basis of documents they had obtained from the Italian authorities. It was the correspondence exchanged between the Greek and the Italian authorities that had made the applicants realise that it was necessary to contact the latter. The applicants had had access to the correspondence in question for the first time in 1993 following the intervention of the public prosecutor of Piraeus. If the applicants had had this information earlier they would have been able to include a relevant ground in their appeal to the first instance Administrative Court of Piraeus. Moreover, the Court of Appeal had not examined the applicants' submission that the goods in question had been given a wrong classification by the customs authorities and that the customs duties had been calculated wrongly.

31. On 30 August 1994, due to a change in the legislation, the applicants' appeals in cassation were transferred from the Second to the Sixth Chamber of the Council of State. A hearing was set for 13 February 1995, when it was adjourned until 19 June 1995.

32. On 31 May 1995 the Special Supreme Court rejected the appeal by two of the applicants against the Council of State's decision No. 2313/92.

33. On 10 July 1995 the Council of State considered, on the one hand, that, insofar as the appeal had been lodged by the first applicant, it was inadmissible since the fines had been imposed on him in his capacity as representative of the applicant companies. On the other hand, the Council considered that the two applicant companies' appeal was admissible. However, it decided to reject it on the merits, in essence adopting the reasoning of the administrative court of appeal. The Council of State considered that the administrative courts were not bound by the decisions of the criminal courts because the two procedures were independent of each other. However, the administrative courts had to consider the findings of the criminal courts before reaching their conclusion. In the circumstances of the

case, the Council of State found that, before reaching its decision, the administrative court of appeal had considered the findings of the indictments chamber of the criminal court of appeal, as evidenced by the opinion of the minority. Finally, the Council considered that the administrative court of appeal was right in not examining the ground of appeal concerning the classification of the cloth in question because it was not contained in a sufficiently concrete manner in the original appeals to the first instance administrative court (decisions Nos. 3915/95, 3916/95, 3917/95, 3918/95, 3919/95 and 3920/95).

34. The applicants have claimed that the text of the decisions of the Council of State was “finalised” (καθαρογραφή) on 9 December 1996. However, the Government produced a certificate issued by the Registry of the Council of State on 17 May 2000, whereby it is attested that the relevant judgments were finalised on 25 June 1996, certified (θεώρηση) on 27 June 1996 and signed (υπογραφή) on 1st July 1996.

35. Following the decision of the Council of State the first applicant company paid the sums specified in the decisions of the administrative court of appeal plus interest and default penalties as from the date of these decisions. The applicant company claims that it paid 188,222,039 drachmas in total. The Government claim that the company took advantage of the salutary provisions of law No. 2443/96 and only paid 130,424,579 drachmas.

THE LAW

THE GOVERNMENT'S PRELIMINARY OBJECTION

36. The Government reiterate their submission that the application, which was lodged on 5 June 1997, is inadmissible for failure to comply with the six-month time-limit. They produce a certificate issued by the Registry of the Council of State whereby it is attested that the relevant judgments, which were delivered on 10 July 1995, were finalised on 25 June 1996, certified on 27 June 1996 and signed on 1st July 1996. As from the last-mentioned date, the applicants could have obtained a copy of the said decisions. Therefore, their allegation that the relevant decisions were not finalised before 9 December 1996 is not only unfounded but also violates the obligation of truth in the conduct of the proceedings before the Court.

37. The applicants, who had previously maintained that the decisions of the Council of State were finalised on 9 December 1996, did not reply to the Government's submissions.

38. The Court recalls that where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision the object and purpose of Article 26, now Article 35 § 1, of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see the *Worm v. Austria* judgment of 29 August 1997, Reports of Judgments and Decisions 1997-V, p. 1547, § 33). Where, as in the present case, the domestic law does not provide for service, the Court considers it appropriate to take the date the decision was finalised and signed as the starting-point, that being when the parties were definitely able to find out its content (*Papachelas v. Greece* [GC], no. 31423/96, § 30, ECHR 1999-II).

39. The Court, contrary to the applicants' allegation, notes that the Council of State's judgments were signed on 1st July 1996, whereas the application was lodged with the Commission more than six months later, on 5 June 1997. If, as the applicants alleged, they had not become aware of the relevant decisions until 9 December 1996, the Court considers that that was due to their own negligence. There is nothing to show that the applicants were prevented from obtaining a copy of the Council of State's judgments as of 1st July 1996. It follows that the applicants have failed to respect the time-limit of six months laid down in Article 35 § 1 of the Convention.

Consequently, the Government's preliminary objection is well-founded.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that as the application was lodged out of time the Court is prevented from examining the merits of the case.

Done in English, and notified in writing on 29 March 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

András BAKA
President