



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

FIRST SECTION

CASE OF SAJTOS v. GREECE

(Application no. 53478/99)

JUDGMENT

STRASBOURG

21 March 2002

FINAL

21/06/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sajtos v. Greece,

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

Mrs F. TULKENS, *President*,

Mr C.L. ROZAKIS,

Mr G. BONELLO,

Mr E. LEVITS,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 28 February 2002,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 53478/99) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Agota Sajtos (“the applicant”), on 14 June 1999.

2. The applicant was represented before the Court by Dr Mester Csaba, a lawyer practising in Budapest. The Greek Government (“the Government”) were represented by the Delegate of their Agent, Mr V. Kyriazopoulos, Adviser at the State Legal Council, and Mrs M. Papida, Legal Assistant at the State Legal Council.

3. The applicant alleged, in particular, a violation of Article 6 § 1 of the Convention, because the court of appeal decided that she was not entitled to compensation for her detention on remand without hearing her and without providing any reasons.

4. By a decision of 15 March 2001 the Court declared the application partly admissible.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1). 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. On 13 May 1996 a private individual, in his capacity as representative of a commercial company, lodged a criminal complaint with the Greek authorities against the applicant. As a result, criminal proceedings were instituted against her and two other Hungarian citizens for fraud which had caused particularly high damage and which had been committed by persons who commit acts of fraud as a profession.

7. On 16 April 1997 the investigating judge summoned the applicant to appear before her and submit statements in defence. At the same time, the investigating judge invited the competent Hungarian Judicial Authorities to provide judicial assistance according to Article 457 of the Code of Criminal procedure. The relevant application to these authorities indicated that the proceedings were based on the above-mentioned complaint and some testimonies. Finally, the investigating judge sent a fax message to the Police Station of Makrygialos, Pierria, where the applicant normally resided, whereby she summoned again the applicant to appear before her.

8. By a document of 3 September 1997, the Ministry of Justice informed the investigating judge that the Hungarian Judicial Authorities had served on the applicant the summon to appear of 16 April 1997.

9. On 13 October 1997 the investigating judge issued an arrest warrant against the applicant following an opinion of the Public Prosecutor at the First Instance Criminal Court of Piraeus. The arrest warrant indicated the offence committed by the applicant, the relevant facts of the case and the relevant Articles of the Criminal Code.

10. After the completion of the investigation proceedings, the file was transmitted to the Public Prosecutor who, on the basis of the file of the case, proposed to commit the applicant and two other Hungarian citizens for trial before the three-member Court of Appeal of Piraeus. Furthermore, the Public Prosecutor proposed that the arrest warrant should continue to produce its effects and that the accused be detained until the hearing, in the event that they were arrested.

11. On 19 March 1998 the indictments chamber of the Appeal Court of Piraeus adopted the proposal of the Public Prosecutor. Its decision no.571/1998 was delivered on 1 June 1998.

12. The applicant came to Greece on 1 August 1998 and was arrested in Katerini on 3 August 1998, at 7.15 p.m. On 4 August 1998 the applicant was brought to the police station of Katerini where she was kept until 7 August 1998 at 6 a.m.

13. On 7 August 1998 the applicant was transported to a police detention centre in Piraeus. She met her lawyer on 10 August 1998. The lawyer

arranged for her to be transported to Korydallos women's prison. She claims that in Korydallos prison she was kept together with "common criminals". Being a vegetarian, she could not eat the food served. As a result, she started losing her hair. She was not interrogated during this period of time either.

14. On 13 August 1998 the applicant appealed against decision no. 571/1998 of the indictments chamber of the Appeal Court of Piraeus. She also applied for release.

15. On 18 September 1998 and 11 November 1998 the applicant submitted further observations to substantiate her appeal and reiterated her application for release.

16. On 17 December 1998 the indictments chamber of the Appeal Court of Piraeus adopted the Public Prosecutor's proposal not to bring the applicant to trial. Accordingly, it discontinued the proceedings against the applicant and ordered her release. Furthermore, it held that no compensation should be granted to the applicant for her detention pending trial, because her detention was due to her own gross negligence. Gross negligence consisted in the fact that the applicant had refused to appear before the investigating judge in order to rebut the charges and produce the relevant documents which were later submitted before the indictments chamber and which would have prevented her from being provisionally detained, if they had been submitted at an earlier stage.

17. The applicant was released on 21 December 1998. On 22 December 1998 she was expelled from Greece.

II. RELEVANT DOMESTIC LAW

18. 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.”

THE LAW

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

19. The applicant complains that she did not have a fair hearing in the matter of compensation for her allegedly unlawful detention. She invokes Article 6 §1 which, in so far as relevant, reads as follows:

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

20. The Government submit that the indictments chamber’s decision was adequately reasoned.

21. The Court has examined the applicant’s complaint in particular as regards the issue of whether the applicant was heard by the indictments chamber and whether that chamber had given sufficient reasons in its decision whereby it held that the applicant was not entitled to compensation for her detention on remand.

22. The Court reiterates that a procedure whereby civil rights are determined without hearing the parties’ submissions cannot be considered to be compatible with Article 6 § 1. In addition, the indictments chamber’s ruling *proprio motu* on the question of compensation precluded the applicant from making an application herself (see paragraph 18 above). Furthermore, the extent to which a court’s duty to give reasons applies may vary according, *inter alia*, to the nature of the decision. Whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see the *Georgiadis v. Greece* judgment of 29 May 1997, *Reports of Judgments and Decisions* 1997-III, p. 960, §§ 40 and 42).

23. In the present case, the Court notes that the indictments chamber refused compensation to the applicant by reference to her own gross negligence but, unlike the case of *Georgiadis v. Greece*, it gave reasons for that conclusion (see paragraph 16 above).

24. However, it did not afford the applicant an opportunity to submit to it her arguments on the matter.

25. The Court therefore concludes that there has been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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. Damage

27. The applicant claims 2,744,000 Hungarian Forints (HUF) for pecuniary damage and 4,000,000 Greek Drachmas (GRD) for non-pecuniary damage.

28. The Government do not express a view.

29. As regards pecuniary damage, the Court cannot speculate as to the outcome of the compensation proceedings had she benefited from all the safeguards enshrined in Article 6. The claim must therefore be rejected.

30. Finally, the Court considers that the applicant sustained non-pecuniary damage and decides to award 3,000 EUR under this head.

B. Costs and expenses

31. The applicant claims 100,000 HUF and 3,333 US dollars for lawyers fees and 2,278,000 HUF for various other costs.

32. The Government do not express a view.

33. The Court notes that the applicant does not submit any details in relation to her claims. Making an equitable assessment as required by Article 41, the Court awards the applicant 3,000 EUR under this head.

C. Default interest

34. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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, 3,000 (three thousand) EUR for non-pecuniary damage and 3,000 (three thousand) EUR for costs and expenses, to be converted into Hungarian Forints at the rate applicable at the date of settlement, together with any value-added tax that may be chargeable;
 - (b) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 March 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Françoise TULKENS
President