



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

THIRD SECTION

CASE OF GUTFREUND v. FRANCE

(Application no. 45681/99)

FINAL

12/09/2003

JUDGMENT

STRASBOURG

12 June 2003

In the case of Gutfreund v. France,

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

Mr G. RESS, *President*,

Mr I. CABRAL BARRETO,

Mr J.-P. COSTA,

Mr L. CAFLISCH,

Mr P. KÜRIS,

Mr J. HEDIGAN,

Mrs M. TSATSA-NIKOLOVSKA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 22 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 45681/99) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a French national, Mr Alain Gutfreund (“the applicant”), on 6 January 1999.

2. The applicant was represented before the Court by Mr F. Vallens, a lawyer practising in Saverne. The French Government (“the Government”) were represented by their Agent, Mr R. Abraham, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, a lack of impartiality on the part of a judge in connection with a legal-aid application.

4. 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.

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

6. By a decision of 25 April 2002, the Chamber declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. By a penal order of 8 October 1997, the applicant was fined 1,000 French francs (FRF) for an assault on his wife that did not incapacitate her from work. On 8 December 1997 he applied to the Saverne Police Court to have that order set aside.

9. On 3 July 1998 the applicant was served by a court bailiff with a summons requiring him to attend the Police Court on 15 September 1998 to answer a charge of “intentional assault entailing no unfitness for work” on 24 July 1997. The offence was classified as a “Class 4 minor offence” and carried a maximum fine of FRF 5,000 under Article 131-13 of the Criminal Code.

10. On 11 August 1998 the applicant lodged a legal-aid application with the legal-aid office of the Saverne *tribunal de grande instance*, in accordance with the provisions of the Legal Aid Act of 10 July 1991 and its implementing decree of 19 December 1991.

11. He furnished evidence, which the legal-aid office accepted, that his monthly income was FRF 2,423. In accordance with section 4 of the 1991 Act, he claimed to be entitled to full legal aid.

12. A committee of the legal-aid office presided over by R. (as attested by a letter of November 2000 from the registry of the Saverne *tribunal de grande instance*) dismissed the application on 27 October 1998 as being “manifestly inadmissible, since it concern[ed] a Class 4 minor offence”.

13. On 13 November 1998 the applicant appealed against that decision to the President of the Saverne *tribunal de grande instance*.

He said that in a similar case the Strasbourg *tribunal de grande instance* had construed the decree differently and granted legal aid. In an order of 16 September 1998, the Strasbourg *tribunal de grande instance* had noted a conflict between the decree and the Act and stated that to resolve it the decree had to be construed in the light of the purpose of the Act.

14. The appeal was heard by R., now sitting in his capacity as the President of the Saverne *tribunal de grande instance*. He upheld the impugned decision in an order of 27 November 1998, against which French law afforded no right of appeal (section 23, sub-paragraph 2, of the Act of 10 July 1991).

He gave a number of reasons for dismissing the applicant’s appeal:

“... although section 10 of the aforementioned Act [of 10 July 1991] provides that ‘legal aid shall be granted ... before all courts’ ..., it does not require it to be granted in all types of proceedings.

... the table appended to Article 90 of the decree and to which the decree refers for the calculation of counsel's remuneration only contemplates an accused receiving assistance in the police court for Class 5 minor offences.

... that restriction cannot be due to an oversight on the part of the public authorities.

... it is not for either the legal-aid office or the president of the court concerned unilaterally to extend the scope of rules in respect of which no appeal has been made to the *Conseil d'Etat*.

... it is perfectly clear that the relevant table is restrictive in scope.”

15. On 15 December 1998 the applicant, assisted by a lawyer, attended the hearing at the Saverne Police Court. In a judgment delivered that same day, the court found him guilty of assault entailing no unfitness for work, but decided not to impose a penalty.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Statutory provisions

16. The Legal Aid Act (Law no. 91-647 of 10 July 1991) provides:

Section 2

“Natural persons whose means are insufficient to enable them to assert their rights in the courts may be granted legal aid. ...”

Section 4

“In order to qualify for full legal aid, applicants must show that their monthly resources are less than 4,400 francs.”

Section 10

“Legal aid shall be granted for both contentious and uncontentious proceedings, to bring or to defend a claim before all courts or in connection with the hearing of a minor in accordance with Article 388-1 of the Civil Code.

...”

Section 16

“Each legal-aid office or department thereof referred to in section 13 shall be presided over by a judge from the seat of the *tribunal de grande instance* or court of appeal, as the case may be.

...”

Section 23

“The decisions of a legal-aid office, a department thereof or the president of the office or department may be referred to the president of the *tribunal de grande instance*, court of appeal or Court of Cassation, as the case may be, ... or his or her delegate.

No appeal shall lie against the decisions of these authorities.

...”

17. Decree no. 91-1266 of 19 December 1991 implementing Law no. 91-647 of 10 July 1991 provides, *inter alia*:

Article 57

“Decisions of offices established at the seat of a *tribunal de grande instance* ... shall be referred to the president of the *tribunal de grande instance* where the office was set up.

...”

18. Article 90 of the decree stipulates that the State’s contribution to the remuneration of lawyers acting for recipients of full legal aid shall be determined by reference to a series of criteria set out in a table appended to the decree. The sole reference in the table to the category of “proceedings for minor offences” is “assistance to the accused in the police court (Class 5)”.

19. A bill on access to the law and justice, intended to reform, *inter alia*, the legal-aid system, is currently before Parliament.

B. Case-law

20. There have been no decisions of the Court of Cassation on the grant of legal aid to persons prosecuted for minor offences not falling into Class 5 (and which therefore are not included in the table appended to the aforementioned decree of 19 December 1991).

21. At the material time, the table was construed differently by different courts. Thus, as the parties have noted, the order made on 27 November 1998 by the President of the Saverne *tribunal de grande instance* contradicted an order made a few months earlier (on 16 September 1998) by the President of the Strasbourg *tribunal de grande instance*.

22. In an order of 22 September 2000, the President of the Béthune *tribunal de grande instance* ruled that legal aid could not be refused to a person charged with a Class 4 minor offence simply because the table appended to Article 90 of Decree no. 91-1266 of 19 December 1991 only

provided for assistance to be given to the accused in the police court in connection with Class 5 minor offences.

THE LAW

23. The applicant complained that the same judge had decided the same legal-aid application, both as president of the legal-aid office and as the authority that had heard the appeal against that decision. He submitted that that state of affairs contravened the requirement set out in Article 6 § 1 of the Convention for courts to be impartial. The relevant parts of that provision provide:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...”

Relying on *Procola v. Luxembourg* (judgment of 28 September 1995, Series A no. 326), the applicant argued that the functions of the administrative authority deciding the application for legal aid and the judicial functions of hearing the appeal against that decision had been exercised by one and the same person. He questioned the impartiality of the president of the *tribunal de grande instance*.

24. The Government rejected that argument. In their submission, Article 6 of the Convention did not apply to the procedure followed by the applicant to obtain legal aid. They pointed out, firstly, that the relevant procedure, which was governed by the Legal Aid Act of 10 July 1991, enabled any litigant to apply for legal aid in connection with civil or criminal proceedings. Such applications, which were optional, were made before the court proceedings commenced or while they were under way, without in any way affecting their outcome.

25. The sole purpose of the procedure for examining legal-aid applications was to determine whether the conditions laid down by the 1991 Act were satisfied and, if so, to grant legal aid in full or in part and, if not, to refuse it. Consequently, the legal-aid office's decision had no bearing on the decision as to guilt, as the determination of the criminal charge was left to the relevant criminal court, in this instance the police court. The Government therefore contended that the procedure for examining the legal-aid application was entirely independent of the proceedings in which the criminal charges against the applicant were determined.

26. They added that the procedure for applying for legal aid had no bearing on the issue of access to the court that would determine the criminal charges against the applicant. Noting that the procedure which the applicant – who had been charged with a Class 4 minor offence – had used to apply to the police court was a simple one, the Government submitted that, despite

being refused legal aid, he would have been perfectly able to defend himself against the charges.

27. As to whether the legal-aid office had been called on to decide a “dispute” (*contestation*) over a “civil” right supposedly enjoyed by the applicant, the Government argued, firstly, that he had no right as such to legal aid, since legal aid was granted only if the conditions that were strictly defined under domestic law were satisfied (as to the applicant’s financial means, and as to his prospects of success in the proposed action, which had to be reasonable). Legal aid was, therefore, a mere possibility, not a right. Even supposing that it could constitute a right in certain circumstances, it was essentially procedural in nature, as an application for legal aid did not affect the merits of the case.

28. Lastly, the Government said that the legal-aid office, which was not regarded as a court or tribunal in the domestic system, did not decide a dispute, as no dispute over a right existed at that stage in the proceedings. The role of the legal-aid office was, therefore, confined to examining an optional application that could be made before or in the course of the proceedings, without affecting their outcome. A legal-aid office was, therefore, not required to determine any civil issue the applicant might raise.

29. The Government contended on the basis of the foregoing that Article 6 § 1 of the Convention was not applicable to the procedure for examining legal-aid applications.

30. The applicant said that the questions of legal aid and of the outcome of the criminal proceedings had no bearing on each other. However, he argued that under the relevant domestic statutory provisions, if the applicant had satisfied the means test and the legal-aid office did not find that the action had no prospects of success (which it could not do in the instant case, as the applicant was defending criminal charges), legal aid had to be granted. It was, therefore, a civil right within the meaning of Article 6 § 1. The applicant added that when the president of the *tribunal de grande instance* heard an appeal against a decision of the legal-aid office, he was, for the purposes of the Convention, determining a “dispute” (*contestation*) over a decision of an administrative nature, as in the aforementioned *Procola* judgment. It followed, in the applicant’s submission, that Article 6 § 1 was applicable in the instant case.

31. The Court notes at the outset that the applicant’s complaint relates solely to the procedure for applying for legal aid. It must determine whether Article 6 § 1 of the Convention applies to that procedure. In doing so, it must determine whether or not the procedure concerned the “determination of [a] criminal charge” against the applicant or of his “civil rights and obligations”.

32. As regards the “determination of [a] criminal charge”, the Court notes that the procedure for applying for legal aid only concerned the provision of legal assistance to the applicant, and not the establishment of

guilt or the determination of the amount of the penalty. Nor did it touch upon the legal or factual merits (see *Delcourt v. Belgium*, judgment of 17 January 1970, Series A no. 11, pp. 13-15, § 25, and *Deweert v. Belgium*, judgment of 27 February 1980, Series A no. 35, pp. 24-25, § 48).

33. Furthermore, as the Court noted in its decision on the admissibility of the application in this case, the amount at stake in the proceedings against the applicant was limited. He was prosecuted in the police court for a Class 4 minor offence (assault on his wife not entailing any unfitness for work) for which the maximum fine was FRF 5,000. In addition, the procedure in the police court is oral and legal representation is not compulsory. Defendants are entitled to appear and to make the submissions they consider appropriate in their defence at the hearing itself. Thus, the procedure can be described as “simple”, and so was accessible to the applicant, even assuming he had limited legal knowledge.

34. Consequently, regard being had to what was at stake in the proceedings and the nature of those proceedings, the interests of justice did not require the applicant to be afforded legal assistance (see *Mato Jara v. Spain* (dec.), no. 43550/98, 4 May 2000).

35. Despite the refusal of legal aid, the applicant therefore had a choice in the light of what was at stake and the nature of the proceedings between appearing in person or being represented by a lawyer. He opted for the latter alternative. It follows that the refusal of legal aid had no bearing on the determination of the charges against the applicant, and indeed he did not dispute that.

36. The Court concludes from the foregoing that the refusal of legal aid was not a decisive factor in the determination of the criminal charge against the applicant.

37. Consequently, the criminal limb of Article 6 § 1 does not come into play.

38. As to whether there was a “dispute” (*contestation*) over “civil rights and obligations”, the Court reiterates its settled case-law on this point: “For Article 6 § 1 under its ‘civil’ head to be applicable, there must be a ‘dispute’ (*contestation* in the French text) over a ‘right’ which can be said, at least on arguable grounds, to be recognised under domestic law. The ‘dispute’ must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play. Finally, the right must be civil in character” (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 30, § 81; *Masson and Van Zon v. the Netherlands*, judgment of 28 September 1995, Series A no. 327-A, p. 17, § 44; and *Fayed v. the United Kingdom*, judgment of 21 September 1994, Series A no. 294-B, pp. 45-46, § 56).

39. As to whether a “dispute” over a “right” existed so as to attract the applicability of Article 6 § 1, the Court will first address the issue whether a “right” to the legal aid claimed could arguably be said to be recognised under national law or the Convention.

40. The Court notes that Article 6 § 3 (c) of the Convention affords “everyone charged with a criminal offence” the right “if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require”. However, in its admissibility decision, the Court found that, in view of the limited amount at stake and the fact that the procedure was “simple”, the interests of justice did not make it essential for the applicant to receive legal assistance (see paragraphs 34 and 35 above). It follows that in the instant case the Convention did not guarantee the applicant the right to free legal assistance or, consequently, the right to legal aid.

41. The question whether it is possible in the present case to affirm that such a right exists must therefore be answered solely by reference to domestic law. In this connection, in deciding whether a “right”, civil or otherwise, could arguably be said to be recognised by French law, the Court must have regard to the wording of the relevant legal provisions and to the way in which these provisions are interpreted by the domestic courts (see *Masson and Van Zon*, cited above, p. 19, § 49).

42. Section 2 of the Legal Aid Act of 10 July 1991 provides that persons with insufficient means to enable them to assert their rights through the courts “may” be granted legal aid. The use of that term in the statutory provision must mean that it was not the legislature’s intention to impose an absolute obligation to grant legal aid (see, *mutatis mutandis*, *Dobbertin v. France*, no. 23930/94, Commission decision of 15 May 1996, unreported).

43. There does not appear to be a recognised right to legal aid in domestic law. The Court notes that Decree no. 91-1266 of 19 December 1991 implementing the Legal Aid Act of 10 July 1991 makes no provision for legal aid to be granted to a defendant charged with a minor offence other than a Class 5 minor offence. It also appears from the information provided by the parties that the domestic courts do not construe these provisions uniformly.

44. In any event, the Court notes that while the procedure for dealing with legal-aid applications may have a decisive impact on the right of access to a court, in which event Article 6 § 1 would be applicable, no such right of access was pleaded in the instant case. Moreover, the Court notes that in view of the limited amount at stake and the “simplicity” of the procedure, the decision of the legal-aid office did not affect the applicant’s access to the court.

45. The Court therefore finds that the applicant did not at the material time possess a right which could arguably be said to be recognised under domestic law.

46. Accordingly, the civil limb of Article 6 § 1 does not come into play either.

47. In the light of the foregoing considerations, the Court concludes that the procedure in issue did not concern the “determination of a criminal charge” against the applicant or of “civil rights and obligations” within the meaning of Article 6 § 1. Consequently, Article 6 § 1 of the Convention is not applicable in the present case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that Article 6 § 1 of the Convention is not applicable in the instant case.

Done in French, and notified in writing on 12 June 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg Ress
President