



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

FIRST SECTION

CASE OF KURTI v. GREECE

(Application no. 2507/02)

JUDGMENT

STRASBOURG

29 September 2005

FINAL

29/12/2005

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 Kurti v. Greece,

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

Mr L. LOUCAIDES, *President*,

Mr C.L. ROZAKIS,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 8 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 2507/02) 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 an Albanian national, Mr Astrit Kurti (“the applicant”), on 2 January 2002.

2. The applicant was represented by Mr Y. Yannacou, a lawyer practising in Thessaloniki. The Greek Government (“the Government”) were represented by the delegates of their Agent, Mr M. Apessos, Senior Adviser at the State Legal Council and Mr K. Georgiadis, Legal Assistant at the State Legal Council.

3. The applicant alleged, in particular, that he did not have a fair hearing in the matter of compensation for his allegedly unlawful detention.

4. The application was allocated to the First 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. By a decision of 6 May 2004 the Court declared the application partly admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

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

8. The Albanian Government, having been informed of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court), also submitted written comments on the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1976 and lives in Thessaloniki.

10. On 29 April 2000 the applicant was driving his motorbike in Thessaloniki. He was stopped by another Albanian, V.G., who asked him to drive him to the railway station. After a while they were stopped by the police who searched them and found 261 grams of heroine under V.G.'s belt. They were both arrested and placed in detention on remand. V.G. testified against the applicant and claimed that he had delivered drugs to him in the past. The applicant repeatedly claimed to be innocent and applied for release but his applications were dismissed.

11. On 10 July 2001 the Thessaloniki first-instance criminal court heard the case. V.G. stated that the first time he ever met the applicant was the day of arrest. The court acquitted the applicant by a majority. One judge expressed the opinion that he was guilty. The Court further held that the State was under no obligation to compensate the applicant for his detention, because his detention was due to his own gross negligence (judgment no. 694/2001).

II. RELEVANT DOMESTIC LAW

12. The relevant provisions of the Code of Criminal Procedure read as follows:

Article 533 § 1

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

Article 535 § 1

“The State shall have no obligation to compensate a person who...has been detained on remand if, whether intentionally or by gross negligence, he was responsible for his own detention.”

Article 536

“1. Upon an oral application by a person who has been acquitted, the court which heard the case shall rule on the State's obligation to pay compensation in a separate decision delivered at the same time as the verdict. However, the court may also make such a ruling *proprio motu*...”

2. The ruling on the State's obligation to pay compensation cannot be challenged separately..."

THE LAW

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

13. The applicant complained that although he was unlawfully detained for fifteen months the first-instance court refused him compensation without giving any reasons. He relied on Article 6 § 1 of the Convention which, insofar as relevant, provides as follows:

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

14. The respondent Government submitted that the decision of the first-instance court was adequately reasoned.

15. The Albanian Government noted that the domestic court failed to provide adequate reasons for its decision not to grant the applicant compensation.

16. 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. 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, among many other authorities, *Ruiz Torija v. Spain*, judgment of 9 December 1994, Series A no. 303-A, p. 12, § 29).

17. In the present case, the domestic court decided to rule out the State's liability for the applicant's detention on account of his own "gross negligence". The lack of precision of this concept, which involves an assessment of questions of fact, required that the courts give more detailed reasons, particularly since their finding was decisive for the applicant's right to compensation (*Georgiadis v. Greece*, judgment of 29 May 1997, *Reports of Judgments and Decisions* 1997-III, p. 949, § 43).

18. The Court therefore concludes that there has been a violation of Article 6 § 1 in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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.”

20. The Albanian Government noted that compensation and costs and expenses should be awarded to the applicant for the damage suffered.

A. Damage

1. Pecuniary damage

21. The applicant claimed 15,566 euros (EUR) on account of loss of income during his detention and the reduction of his income for the two months which followed his release.

22. The respondent Government claimed that this amount was excessive and unjustified.

23. The Court cannot speculate as to the outcome of the compensation proceedings, had the applicant benefited from all the safeguards enshrined in Article 6 (see *Georgiadis v. Greece*, op. cit., p. 960, § 49). For this reason, it makes no award under this head.

2. Non-pecuniary damage

24. The applicant claimed EUR 9,000 for non-pecuniary damage.

25. The respondent Government contended that the finding of a violation of the Convention would constitute sufficient just satisfaction.

26. Having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

27. The applicant claimed EUR 9,300 for the costs and expenses incurred before the Court.

28. The respondent Government submitted that the applicant’s claims were excessive and unsupported by any material evidence. In their view the total amount of compensation for costs and expenses for the applicant should not exceed EUR 1,500.

29. The Court notes that the applicant’s lawyer gave no particulars of this claim, as required by Rule 60 § 2 of the Rules of Court, although he was invited to do so. In these circumstances, the Court makes no award under this head.

C. Default interest

30. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 September 2005 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President