



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

FIRST SECTION

CASE OF ALSAYED ALLAHAM v. GREECE

(Application no. 25771/03)

JUDGMENT

STRASBOURG

18 January 2007

FINAL

23/05/2007

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 Alsayed Allaham 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,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 25771/03) 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 Syrian national, Mr Mhn Ghassan Alsayed Allaham (“the applicant”), on 8 August 2003.

2. The applicant was represented by Mr E. Papadakis, a lawyer practising in Athens. The Greek Government (“the Government”) were represented by the delegates of their Agent, Mr V. Kyriazopoulos, Adviser at the State Legal Council and Mrs S. Trekli, Legal Assistant at the State Legal Council.

3. The applicant alleged that he had been subjected to acts of police brutality and that the authorities had failed to carry out an adequate investigation into the incident, in breach of Articles 3 and 13 of the Convention.

4. By a decision of 20 October 2005 the Court declared the application partly admissible.

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

THE FACTS

6. The applicant was born in 1962 and lives in Athens.

I. OUTLINE OF THE EVENTS

7. Since 1986 the applicant lives and works in Greece. He is married to a Greek woman and possesses a valid stay and work permit.

8. On 8 September 1998, at approximately 07.00 p.m., the applicant and two other Syrian nationals accompanied a friend to the Ano Patissia police station in order to report a robbery. Having waited for a long time to be attended to, the applicant started complaining. He alleges that he was then brutally beaten on his head by a police officer, Mr Georgantzis, while another police officer, Mr Giannopoulos, was holding him still. Other police officers to whom he turned for help insulted him and locked him in an empty office for three hours. The applicant alleges that the behaviour of the police officers changed when they realised that he was legally settled in Greece. Then the applicant was allowed to leave the police station. He went immediately to the regional hospital where he was examined by a doctor at approximately 11 p.m. He obtained a medical certificate by Dr. Kremlis, an otolaryngologist specialist, which read as follows:

“[The applicant] was examined at the out-patients' department of the otolaryngology clinic on 8 September 1998 reporting a recent beating. The patient complains of buzzing, ear-pain and hearing loss in the left ear. From the clinical examination it was found that he has signs of an ecchymosis on the left zygomatic area and signs of blood on the left side of the auditory duct, which came from the injury to the area around the eardrum membrane. The extent of the damage will be determined upon completion of the remaining otoscopy tests, as the present condition does not appear to be severe.”

9. Following the incident the applicant suffered from headaches and dizziness. On 16 September 1998 he was diagnosed as suffering from “perforation of the left ear (eardrum)”. A month later a doctor from the same hospital ascertained “an almost complete restoration of the perforation that had been noted a month ago at the tympanic membrane of the left ear”.

10. The applicant currently suffers from hearing loss in both ears and vertigo. He has undergone several medical examinations and treatment over the last years. On 30 August 2002 a university medical doctor declared that the applicant's working capacity had diminished by 80% on account of vertigo and impaired hearing; the respective significance of these two factors was not specified. As a consequence, he was unable to accomplish any manual work.

II. DISCIPLINARY MEASURES AGAINST MR GEORGANTZIS AND MR GIANNOPOULOS

11. On 14 September 1998 the applicant reported the incident to the Minister of Public Order.

12. On 10 July and 20 November 2000 the Chief of the Greek Police fined Mr Georgantzis and Mr Giannopoulos 100,000 drachmas (293 euros)

and 50,000 drachmas (147 euros) respectively. He considered that the above police officers had caused bodily harm to the applicant.

13. On 27 October 2000 Mr Georgantzis appealed against that decision but his appeal was dismissed by the Athens Administrative Court of Appeal on 30 November 2001 (decision no. 2602/2001).

III. CRIMINAL PROCEEDINGS AGAINST MR GEORGANTZIS

14. On 9 September 1998 the applicant filed a criminal complaint against Mr Georgantzis and Mr Giannopoulos and also against the chief of the police station, Mr Moukas. Following a preliminary inquiry, the authorities dropped the criminal charges against Mr Giannopoulos and Mr Moukas. On an unspecified date criminal proceedings were instituted against Mr Georgantzis for causing serious bodily harm. The applicant joined the proceedings as a civil party claiming a specific amount by way of damages. He produced before the court the medical reports which had recorded his injuries. Several witnesses were heard.

15. On 19 February 2002 the three-member Athens Court of Appeal sitting as a first instance court found Mr Georgantzis guilty of serious bodily harm and sentenced him to four months' imprisonment. The court found that it had been clearly and unequivocally established by the medical reports and the other evidence before it that Mr Georgantzis had first punched the applicant and then violently slapped him on the face, causing him a scratch of approximately 3 x 0.5 cm on the left temple and a perforation of his left eardrum. It also found that Mr Georgantzis' defence "had not been sincere and did not agree with the facts" (decision no. 2048/2002). Mr Georgantzis appealed.

16. The appeal trial took place on 18 December 2002 before the five-member Athens Court of Appeal. The court heard several witnesses, among whom Mr Giannopoulos and Mr Moukas. It found that it had not been established that the accused had beaten the applicant. It stressed that it had reached that conclusion on the basis of the statements of Mr Giannopoulos and Mr Moukas and of three additional eye-witnesses, one of whom was another colleague of the accused. It considered that the medical reports produced by the applicant were not "safe criteria for the defendant's guilt, mainly because they are directly contrary to the testimonies of the above witnesses who testify with their own knowledge and perception that the defendant did not hit [the applicant]; therefore the injuries referred to [in the medical reports] could have been caused by another reason, taken also into account that the deafness complained of [by the applicant] existed before the incident, as stated by [two eye-] witnesses". Thus, the appeal court, by a majority, acquitted Mr Georgantzis. However, two judges opined that in view of all the evidence produced before the court the accused should have been declared guilty (decision no. 1861/2002).

17. On 19 February 2003 the applicant, who did not have the right to appeal in cassation under domestic law, asked the Public Prosecutor to bring the case before the Court of cassation. On 24 February 2003 the latter dismissed his request.

IV. CIVIL PROCEEDINGS AGAINST MR GEORGANTZIS

18. On 4 September 2003 the applicant brought an action for damages against Mr Georgantzis in the Athens Administrative Court of First Instance.

19. On 30 June 2004 the court rejected his action (decision no. 7820/2004).

20. On 29 September 2004 the applicant appealed to the Athens Administrative Court of Appeal. The proceedings are still pending.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

21. The applicant complained that that he had been subjected to acts of police brutality which inflicted on him great physical and mental suffering amounting to torture, inhuman and/or degrading treatment or punishment, in breach of Article 3 of the Convention. He further complained that the Greek authorities had failed to secure his rights as required by the procedural obligation imposed by Article 3, taken together with Article 13 of the Convention.

Article 3 of the Convention provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. The submissions of the parties

22. The applicant submitted that his serious injuries were the result of the unnecessary and disproportionate use of force by the police. He also complained about the acquittal of the police officer who had allegedly beaten him. He asserted that the court of appeal ignored all the medical reports and the other evidence produced before it and acquitted the accused on the sole basis of the statements of the witnesses for the defence.

23. The Government emphasised that it was not normally within the province of the Court to substitute its own assessment of the facts for that of the domestic courts. They submitted that in the present case the Athens Court of Appeal had disagreed with the applicant's account of how his injuries came about and that no material in the file could call into question the findings of the national court and add weight to the applicant's allegations. The Government further stressed that the State's duty to conduct an effective official investigation was not an obligation of result, but of means. They submitted that following the event, an administrative investigation was opened and a criminal prosecution was brought against the police officer who was involved in the incident.

B. The Court's assessment

1. Concerning the alleged ill-treatment

24. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and the *Assenov and Others v. Bulgaria* judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93). The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see the *Chahal v. the United Kingdom* judgment of 15 November 1996, *Reports* 1996-V, p. 1855, § 79).

25. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see the *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where

the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

26. In the instant case the applicant complained that he was ill-treated by two police officers while accompanying a friend to a police station in order to report a robbery. The Government did not dispute the chronological order of the events, namely that the applicant went to the police station at approximately 7 p.m., that he stayed there for about three hours and that immediately upon release he went to the regional hospital where he was examined by a doctor at approximately 11 p.m. Nor did the Government dispute the validity of the medical reports, according to which the applicant bore injuries to his face and his eardrum had been perforated (see paragraph 8 above). The Government were accordingly under the obligation to provide a plausible explanation of how the applicant's injuries had been caused.

27. The Court recalls in particular that where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). It is incumbent on the State to provide a plausible explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention (*Selmouni v. France*, cited above, § 87). It is not sufficient for the State to refer merely to the acquittal of the accused police officers in the course of a criminal prosecution, and consequently, the acquittal of officers on a charge of having assaulted an individual will not discharge the burden of proof on the State under Article 3 of the Convention to show that the injuries suffered by that individual whilst under police control were not caused by the police officers (*Corsacov v. Moldova*, no. 18944/02, § 55, 4 April 2006). The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (*Mikheyev v. Russia*, no. 77617/01, § 108, 26 January 2006).

28. The Court notes that in the present case the five-member Athens Court of Appeal, which acquitted on appeal the only police officer who had been committed to trial, confined itself to taking essentially into account the testimonies of five eye-witnesses, three of whom were colleagues of the accused, and refused to give any credit to the medical reports establishing the applicant's injuries, on the sole ground that they were "directly contrary to the testimonies of the above witnesses" (see paragraph 16 above); it also considered that the hearing problems complained of by the applicant existed before the incident solely because two of the eye-witnesses had said so.

29. In the Court's view this reasoning does not reflect any serious effort to discover what had really occurred in the police station on the day of the incident. It notes that the applicant was examined by a State doctor not later than an hour after he had left the police station and that there is nothing in the case file or the parties' submissions to suggest that the injuries described in the medical reports had been inflicted either before or just after his stay at the police station. The Court considers that weight should also be given to the acknowledgement by the Chief of the Greek Police that Mr Georgantzis and Mr Giannopoulos had caused bodily harm to the applicant, as well as to the judgment of the first instance jurisdiction which was satisfied on the evidence produced before it that the applicant had been beaten by Mr Georgantzis (see paragraphs 12-13 and 15 above).

30. On the basis of all the material adduced before it, the Court finds that neither the authorities at the domestic level, nor the Government in the proceedings before the Strasbourg Court have advanced any convincing explanation as to the origin of the applicant's injuries (see, by contrast, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18, §§ 29-30). The Court concludes therefore that the Government have not satisfactorily established that the applicant's injuries were caused otherwise than – entirely, mainly, or partly – by the treatment he underwent while he was under the control of police officers (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34).

31. The question which therefore arises next is whether the minimum level of severity required for a violation of Article 3 of the Convention can be regarded as having been attained in the instant case (see, among other authorities, *İlhan v. Turkey* [GC], no. 22277/93, § 84, ECHR 2000-VII). The Court recalls that the assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Tekin v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1517, § 52).

32. In considering whether a punishment or treatment is “degrading” within the meaning of Article 3, the Court will also have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see, for example, *Raninen v. Finland*, judgment of 16 December 1997, *Reports* 1997-VIII, pp. 2821-22, § 55).

33. In the light of the above circumstances, the Court considers that the physical harm suffered by the applicant at the hands of the police, as well as the feelings of fear, anguish and inferiority which the impugned treatment had produced in him, must have caused the applicant suffering of sufficient severity for the acts of the police to be categorised as inhuman and

degrading treatment within the meaning of Article 3 of the Convention (see, *mutatis mutandis*, *Balogh v. Hungary*, no. 47940/99, 20 July 2004).

34. The Court concludes that there has been a breach of Article 3 of the Convention in this regard.

2. Concerning the alleged inadequacy of the investigation

35. In view of its above findings, the Court does not deem it necessary to consider this aspect of the case separately.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

1. Pecuniary damage

37. The applicant claimed 4,776.25 euros (EUR) relating to ongoing medical treatment of the ailments resulting from his injuries and EUR 29,702.20 for loss of income since the incident. He submitted that due to his injuries he was unable to resume his previous occupation as a construction worker. In support of his claim, the applicant submitted several bills of costs relating to hospital expenses and pharmaceutical treatment.

38. The Government contended that the amounts claimed were arbitrary and unsubstantiated. They contested the method used by the applicant to calculate his pecuniary damage and pointed out that the applicant had received financial aid from the Social Security Fund for the days he was unable to work. They further expressed their doubts as to the applicant's inability to work, since his assertion in this respect had not been verified by any public institution. They argued that any award for pecuniary damage should not exceed EUR 2,000.

39. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings (see *Mikheyev v. Russia*, cited above, § 156).

40. In the instant case the Court observes, on the one hand, that the medical treatment which the applicant underwent over the last years together with his diminished working capacity are due, to an undetermined extent (see paragraph 10 *in fine* above), to the ear injury which he suffered.

On the other hand, however, it observes that it does not transpire from the file that a clear connection has ever been established between the incident and the totality of the applicant's current health problems. Deciding on an equitable basis, the Court awards the applicant EUR 4,000 under this head, plus any tax that may be chargeable on that amount.

2. Non-pecuniary damage

41. The applicant also claimed EUR 1,500,000 for non-pecuniary damage.

42. The Government argued that any award for non-pecuniary damage should not exceed EUR 8,500.

43. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage which cannot be compensated solely by the findings of violations. Having regard to the specific circumstances of the case and ruling on an equitable basis, the Court awards the applicant EUR 20,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

44. The applicant claimed EUR 12,500 for costs and expenses. This amount covered translation fees and the costs of representation for the proceedings before the Court, though the applicant stated that he was not yet able to pay his lawyer. According to the only invoice submitted, the applicant was charged EUR 1,500 for translation fees.

45. The Government did not agree with the amount claimed, stating *inter alia* that the translation fees were too high and that the applicant had failed to prove the alleged representation expenses. According to them, any award for non-pecuniary damage should not exceed EUR 1,000.

46. According to the Court's settled case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were also reasonable as to quantum (see, for example, *Sahin v. Germany* [GC], no. 30943/96, § 105, ECHR 2003-VIII).

47. In the instant case the Court observes that, apart from the one invoice, the applicant has not submitted itemised bills of costs in respect of his claims for legal fees. Therefore the full claim cannot be awarded. Nevertheless, the Court accepts that the applicant will have to pay his lawyer's fees. Accordingly, it considers it reasonable to award the applicant EUR 3,000 under this head, plus any tax that may be chargeable on that amount.

C. Default interest

48. 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 3 of the Convention in respect of the treatment suffered by the applicant at the hands of the police;
2. *Holds* that there is no need to examine separately the complaint that there has been a failure to comply with the procedural obligation imposed by Article 3, taken together with the complaint under Article 13 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of pecuniary damage, EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage and EUR 3,000 (three thousand euros) in respect of costs and expenses, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President