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

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French courts did not breach Convention in convicting George Soros for insider trading

In today's Chamber judgment in the case **Soros v. France** (application no. 50425/06), which is not final[1], the European Court of Human Rights held, by a majority, that there had been:

No violation of Article 7 (no punishment without law) of the European Convention on Human Rights.

The case concerned George Soros, who was convicted and sentenced by the French courts for insider trading in the 1990s.

Principal facts

The applicant, George Soros, is a national of the United States of America who was born in 1930 and lives in New York.

In 1988, having founded a large hedge fund, Q.F., he convened a meeting in New York on 12 September with a number of investors. Following that meeting, a Swiss banker invited him to meet P., who was intending, with other investors, to buy up shares in S., a major French bank, in a take-over bid. On 19 September 1988, after declining P.'s offer, George Soros bought up 50 million United States dollars' worth of shares in four recently privatised French companies, including S.

Between 22 September and 17 October 1988 Q.F. acquired a number of shares in bank S. for the sum of 11.4 million dollars, of which 7 million were invested in the French market and 4.4 million on the London stock exchange. Only a few days after acquiring the shares in S., Q.F. decided to sell some of them, and the remainder were sold a month later. Q.F. made a profit of approximately 2.28 million US dollars – of which 1.1 million on the French market – as a result of rapidly buying and selling the shares.

In February 1989 the C.O.B. (regulator of the French Stock Exchange) opened an investigation into trading in shares in S. between 1 June and 21 December 1988, to determine whether there had been any insider trading. Having identified some suspicious transactions, the C.O.B. submitted its full investigation report to the public prosecutor.

In 1990 a judicial investigation was opened against Mr Soros, who was suspected, along with others, of insider trading by taking advantage of inside information. He was tried for acquiring shares in S. when he had, by virtue of his position, certain inside information on the movement of the shares in question. In the proceedings he pleaded that the prosecution was unlawful because the law applicable to insider trading had been unforeseeable. He argued that, in view of the wording of Article 10-1 of Order no. 67-

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

833 of 28 September 1967, his conduct could not have been regarded as an offence at the time he made the share purchases.

The court found the applicant guilty of insider trading and fined him 2.2 million euros (EUR). He appealed, but the Paris Court of Appeal upheld the judgment. The Court of Cassation, however, taking the view that the share purchases on the London Stock Exchange could not constitute insider trading under French law, referred the case back to the Paris Court of Appeal, which reduced the fine to EUR 940,507.22 by a judgment of 20 March 2007, to take into account only those shares in S. that had been traded on the Paris Bourse.

Complaints, procedure and composition of the Court

Relying on Article 7 (no punishment without law), George Soros alleged that there had been a two-fold violation. He first complained that the essential elements of the offence of insider trading had been insufficiently clear at the time of his conviction. According to the definition in Article 10-1 of the Order of 28 September 1967 insider trading could be committed only by a professional having business dealings with the target company. He further complained that European Union legislation, which was clearer and thus more favourable to him than French law, had not been applied in the proceedings against him.

The application was lodged with the European Court of Human Rights on 13 December 2006.

Judgment was given by a Chamber of seven, composed as follows:

Dean **Spielmann** (Luxembourg), *PRESIDENT*,
Jean-Paul **Costa** (France),
Karel **Jungwiert** (the Czech Republic),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Ganna **Yudkivska** (Ukraine),
Angelika **Nußberger** (Germany), *JUDGES*,

and also Claudia **Westerdiek**, *SECTION REGISTRAR.*

Decision of the Court

Article 7

The Court observed that, on account of the principle that laws must be of general application, the wording of statutes was not always precise. It further reiterated that the scope of the concept of foreseeability depended to a considerable degree on the content of the instrument in question, the field it was designed to cover and the number and status of those to whom it was addressed. In today's case, in view of the subject matter, well-informed professionals had a duty to be prudent in their work and to take special care in assessing the risks of their actions.

The Court took note that the definition of the term "insider" in the Order of 28 September 1967 was quite general and that the parties had disagreed with the particular expression "in the exercise of their profession or duties". Each of the courts that had tried George Soros had found the law sufficiently precise for him to be aware that he should not invest in shares in S. after being contacted by P. While it was true that Mr Soros was the first individual to be prosecuted in France for that type of offence,without having any professional or contractual relations with the company in which he purchased the shares, the Court found that France could nevertheless not be criticised for any

failure concerning the foreseeability of the law. In the absence of any precedent, the courts had not been in a position to clarify the case-law on that point.

The Court observed that, at the relevant time, Mr Soros was a famous institutional investor, well-known to the business community and a participant in major financial projects. As a result of his status and experience, he could not have been unaware that his decision to invest in shares in S. entailed the risk that he might be committing the offence of insider trading. Bearing in mind that there had been no comparable precedent, he should have been particularly prudent.

Lastly, the Court was not convinced by Mr Soros's argument that it had been because of his conduct that the applicable French legislation had been amended.

Mr Soros had also complained about the failure, in the proceedings against him, to apply the relevant European Union legislation, which was clearer than domestic law in that area. In his view, the Directive of 1989 (89/592/EC, 13 November 1989) contained specific provisions that precisely defined the notion of "inside information" in a manner that would have produced a more favourable result for him.

The Court found that it did not need to examine that complaint, having reached the conclusion that the foreseeability of the domestic law applicable in 1988 was sufficient for Mr Soros to have been aware that his conduct might be unlawful.

By four votes to three, the Court held that there had been no violation of Article 7 on account of the alleged lack of foreseeability of the law.

Separate opinion

Judges **Villiger, Yudkivska and Nußberger** expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

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