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

THIRD SECTION

DECISION

Application no. 49446/15
Stefan Karl KRISTJANSSON
against Iceland

The European Court of Human Rights (Third Section), sitting on 29 June 2021 as a Committee composed of:

Georges Ravarani, *President,*
Anja Seibert-Fohr,
Andreas Zünd, *judges,*

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to the above application lodged on 28 September 2015,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Stefán Karl Kristjánsson, is an Icelandic national who was born in 1980 and lives in Reykjavik. He was represented before the Court by Mr Jón Bjarni Kristjánsson, a lawyer practising in Reykjavik.

2. The Icelandic Government ("the Government") were represented by their Agent, Mr Einar Karl Hallvarðsson, State Attorney General.

A. Circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant is a practising lawyer in Iceland. On 12 August 2013 his client was charged with offences against the Narcotics Act (no. 65/1974). The case was filed with the Reykjanes District Court on 26 September 2013, at which point the applicant was appointed as defence counsel. A hearing in the case was scheduled for 11 October 2013.

5. Between 11 October and 3 December 2013 a number of hearings were held in the case, some of which the applicant did not attend and some of which he asked to have postponed. In some instances, the applicant contested whether he had indeed been absent and whether he had been properly notified of those hearings.

6. At the main hearing on 4 February 2014, the defendant attended, but the applicant was absent. According to the record of the hearing, the defendant requested that the appointment of the applicant as his defence counsel be annulled and that no other defence counsel be appointed in his stead. The prosecutor proceeded to drop the disputed part of the charges against the defendant, who in turn pleaded guilty to the remaining charges.

7. On 11 February 2014, without further hearings being held, the District Court convicted the defendant and sentenced him to four months' imprisonment, suspended. In that judgment, the applicant was fined 300,000 Icelandic krónur (ISK; approximately 2,000 euros (EUR) at the material time). The judgment noted that the applicant had been repeatedly absent from hearings, which had unduly delayed the case and offended the dignity of the court within the meaning of section 223(1) (a) and (d) of the Criminal Procedure Act (no. 88/2008).

8. On 3 July 2014 the applicant appealed to the Supreme Court as regards the imposition of the fine, by way of an appeal lodged by the State Prosecutor at his request. Before the Supreme Court, the applicant requested that the District Court judgment be annulled with regard to the imposition of the fine.

9. The Supreme Court delivered a judgment on 31 March 2015 which upheld the imposition of a fine on the applicant, but lowered its amount from ISK 300,000 to ISK 50,000 (approximately EUR 340 at the material time).

10. The Supreme Court noted that a fine imposed pursuant to Chapter XXXV of the Criminal Procedure Act (see paragraph 19 below) was not subject to a maximum amount and that the amount of the fine imposed on the applicant by the District Court had been considerable. In the light of the foregoing, the Supreme Court found that the imposition of the fine had amounted to a criminal punishment. It furthermore held that the applicant's right to mount a defence at the level of the Supreme Court was not subject to any limitations and that he had been able to present all his arguments. Consequently, the Supreme Court held, his right to a fair trial had not been adversely affected by the fact that the District Court had imposed the fine without holding a hearing on that issue. In this connection, the Supreme Court referred to its previous judgment of 28 May 2014 in case no. 37/2014, which was the subject of the Grand Chamber's recent judgment in *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* ([GC], nos. 68273/14 and 68271/14, 22 December 2020).

11. Concerning the applicant's conduct, the Supreme Court found that it had unduly delayed the case. Considering that the applicant had previously been reprimanded by the presiding judge at the District Court for failing to attend the hearing of 14 November 2013, his absence from the main hearing in the case had offended the dignity of the court. The Supreme Court confirmed the imposition of a fine but lowered the amount to ISK 50,000. The applicant was also made to pay the costs of the appeal in the amount of ISK 12,151 (approximately EUR 80 at the material time).

12. One of the three Supreme Court judges sitting on the bench in the applicant's case dissented. In a separate opinion, that judge reasoned that the procedure employed had not guaranteed the applicant's right to a fair trial, as he had not been notified of an intention to impose a criminal punishment on him or her, or given the opportunity to object.

B. Relevant domestic law and practice

13. The relevant domestic law and practice are summarised in the Grand Chamber's judgment in *Gestur Jónsson and Ragnar Halldór Hall* (cited above, §§ 35-53).

COMPLAINT

14. The applicant complained that the Reykjanes District Court had tried and sentenced him *in absentia*, in violation of his rights under Article 6 §§ 1 and 3 of the Convention. He further maintained that the Supreme Court had not remedied the procedural violations that had occurred before the District Court, and could not have done so, given the terms of domestic law.

THE LAW

15. The Government did not raise any objections as to the admissibility of the case, but submitted that there had been no violation of the applicant's rights under the Convention. In that connection, they acknowledged that the applicant had been tried and convicted by the Reykjanes District Court *in absentia*, but submitted that the proceedings before the Supreme Court had sufficed to remedy the defects in the District Court's procedure.

16. The applicant submitted that he had been tried *in absentia* by the District Court and that the Supreme Court proceedings had not been capable of remedying the defects on appeal.

17. While the Government have not raised an objection as regards the applicability of Article 6 of the Convention, the Court considers that it has to address this issue of its own motion. The question of applicability is an issue of the Court's jurisdiction *ratione materiae,* which the Court is obliged to examine at every stage of the proceedings (see, among other

authorities, *Tănase v. Moldova* [GC], no. 7/08, § 131, ECHR 2010, and *Studio Monitori and Others v. Georgia*, nos. 44920/09 and 8942/10, § 32, 30 January 2020).

18. The Court notes that the facts of the present case are similar to those in the leading case of *Gestur Jónsson and Ragnar Halldór Hall* (cited above), where court fines were imposed on the applicants, who were practising lawyers, on the same legal basis. In the above-mentioned case, the Grand Chamber held that the proceedings in which a court fine had been imposed on the applicants did not involve the determination of a "criminal charge" within the meaning of Article 6 of the Convention. Consequently, the Grand Chamber found that Article 6 did not apply to those proceedings and that the applicants' complaint under that provision was incompatible *ratione materiae* with the provisions of the Convention.

19. In the light of the judgment in *Gestur Jónsson and Ragnar Halldór Hall* (cited above, § 98), the Court considers that the proceedings against the applicant in the present case did not involve the determination of a "criminal charge" within the meaning of Article 6 of the Convention. Consequently, the applicant's complaint is incompatible *ratione materiae* with the provisions of the Convention and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 22 July 2021.

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Olga Chernishova
Deputy Registrar

Georges Ravarani
President