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

Press Release
issued by the Registrar of the Court

ECHR 365 (2018)
30.10.2018

Conviction of defence lawyers for contempt of court did not violate the Convention

In today's **Chamber** judgment[1] in the case of **Gestur Jónsson and Ragnar Halldór Hall v. Iceland** (applications nos. 68273/14 and 68271/14) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 §§ 1, 2, and 3 (right to a fair trial / presumption of innocence) and

no violation of Article 7 § 1 (no punishment without law)) of the European Convention on Human Rights.

The complaint under Article 2 of Protocol No. 7 was rejected for non-exhaustion of domestic remedies.

The case concerned the imposition of fines on the applicants after they resigned as defence counsel in a criminal case.

The Court found in particular that the applicants had been fined *in absentia*, but that they had had a sufficient remedy in the form of appeal proceedings before the Supreme Court that had provided them with the opportunity to obtain a fresh factual and legal determination of the charges against them.

It further found that the application of the domestic provisions, as well as the amount of the fines in question, could have been reasonably foreseen by Mr Jónsson and Mr Hall.

Principal facts

The applicants, Gestur Jónsson and Ragnar Halldór Hall, are two Icelandic nationals who were born in 1950 and 1948 respectively and live in Reykjavík (Iceland).

Mr Jónsson and Mr Hall are practising attorneys in Iceland. They were appointed as defence lawyers for two defendants in a criminal case in March 2012. In April 2013 they requested that their appointment as defence counsel be revoked, which was refused by the District Court.

Subsequently,, in a District Court judgment against their former clients, the applicants were fined, in their absence, 1,000,000 Icelandic *krónur* (approx. 6,200 euros each) for contempt of court and for causing unnecessary delays in the proceedings. The applicants had not been summoned to the trial hearing and had not been informed of the intention of the court to fine them. The Supreme Court confirmed the imposition of fines.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1, 2, and 3 (right to a fair trial / presumption of innocence) and Article 7 § 1 (no punishment without law) to the European Convention, the applicants complained in particular

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.

that the District Court had tried and sentenced them *in absentia*. Furthermore, they argued that they had been found guilty of an offence which did not constitute a criminal offence under national law and that the severity of the amount of their fines had not been foreseeable according to the domestic law or practice.

Relying on Article 2 of Protocol No. 7 (right of appeal in criminal matters), they also maintained that their right to appeal had been violated as their defence had only been heard before one tribunal, the Supreme Court.

The application was lodged with the European Court of Human Rights on 16 October 2014.

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

Julia **Laffranque** (Estonia), *President*,
Robert **Spano** (Iceland),
Işıl **Karakaş** (Turkey),
Paul **Lemmens** (Belgium),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),
Ivana **Jelić** (Montenegro),

and also Stanley **Naismith**, *Section Registrar.*

Decision of the Court

Article 6 § 1

The Court reiterated that it used the "Engel criteria" when assessing whether or not there was a "criminal charge". It noted that the Icelandic Supreme Court had concluded that the fines imposed amounted to a "criminal penalty". Therefore, and having regard to the Engel criteria, the Court held that the applicants' offence should be regarded as having been based on a "criminal charge" within the meaning of Article 6 § 1 (criminal limb).

It was not disputed by the parties that Mr Jónsson and Mr Hall had been tried *in absentia* by the District Court. The Court therefore examined whether the appeal proceedings before the Supreme Court had provided the applicants with a remedy in the form of a fresh factual and legal determination of the criminal charge against them, in accordance with the case-law of the Court (see *Sejdovic v. Italy)*.

The Court observed that Mr Jónsson and Mr Hall had appealed to the Supreme Court and submitted documentary evidence on appeal. An oral hearing had been held before the Supreme Court where the applicants had had full legal representation. Furthermore, the court had heard counsel for the defence and the public prosecutor. The Supreme Court had had full jurisdiction to examine questions of law and fact.

The Court concluded that the applicants had been given a sufficient opportunity to obtain a fresh factual and legal determination of the merits of the charges against them before the Supreme Court, which had allowed them to make their case in a way which was compliant with Article 6 § 1.

It found that the Supreme Court's interpretation and application of Icelandic law to the applicants' case could not be considered arbitrary or manifestly unreasonable since Article 6 did not require the Supreme Court to act of its own motion to ask Mr Jónsson and Mr Hall to give statements or have witnesses examined.

Article 7

The Court pointed out that the case seemed to have been the first of its kind brought before the Supreme Court on appeal due to the *in absentia* imposition of fines on defence counsel who had resigned in disregard of the orders of a trial court. It reiterated that where the domestic courts were called upon to interpret a provision of criminal law to a set of facts for the first time, an interpretation of the scope of the offence which was consistent with the essence of the offence must be considered foreseeable.

The Court noted that the interpretation given to the provision by the national courts did not contravene the very essence of the offence in question since the wording of the provision did not exclude the imposition of a fine on defence counsel who had been replaced, had resigned or who had been relieved of his or her duties. Consequently, it did not accept the applicants' argument that the provisions, as applied by the Supreme Court to the facts of the case, lacked foreseeability within the meaning of Article 7.

The Court also held that the mere fact that a provision of domestic law did not set the maximum amount which could be imposed in the form of a fine did not, as such, run counter to the requirements of Article 7. Moreover, the Court noted that the case was the first of its kind and one in which the Supreme Court had considered that the nature and gravity of the applicants' actions warranted the imposition of fines which were higher than in prior cases with different facts. Therefore, the Court found that, in the light of the conclusions of the Supreme Court, the amount of the fines in question was consistent with the essence of the offence and could have been reasonably foreseen by Mr Jónsson and Mr Hall.

Article 2 of Protocol No. 7

The Court rejected the complaint under Article 2 of Protocol No. 7 for non-exhaustion of domestic remedies since the Supreme Court was not provided with the opportunity of addressing and thereby preventing or putting right the Convention violation alleged against it. It could not be deduced, either from the judgment of the Supreme Court or from the accompanying documentation, that Mr Jónsson and Mr Hall had formulated their claims and grounds in a way that they could be considered to have sufficiently invoked their rights under Article 2 of Protocol No. 7.

The judgment is available only in English.

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