

FIRST SECTION

CASE OF **VILBORG** YRSA SIGURÐARDÓTTIR v. ICELAND

(Application no. 32451/96)

JUDGMENT

STRASBOURG

30 May 2000

In the case of Vilborg Yrsa SIGURÐARDÓTTIR v. Iceland,

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

Mrs E.	Palm,	<i>President,</i>
Mrs W.		Thomassen,
Mr Gaukur		Jörundsson,
Mr R.		Türmen,
Mr C.		Bîrsan,
Mr J.		Casadevall,
Mr R.	Maruste,	<i>judges,</i>

and Mr M. O’Boyle, *Section Registrar,*

Having deliberated in private on 23 May 2000,

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

PROCEDURE

1. The case originated in an application (no. 32451/96) against Iceland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Icelandic national, Mrs **Vilborg** Yrsa Sigurðardóttir (“the applicant”), on 15 May 1996.

2. The applicant was represented by Mr Jón Steinar Gunnlaugsson, a lawyer practising in Reykjavík. The Icelandic Government (“the Government”) were represented by their Agent, Ms Björg Thorarensen, Director at the Ministry of Justice and Ecclesiastical Affairs.

3. The applicant complained, firstly, that, in the absence of any reasonable suspicion against her, her arrest and detention on remand in connection with a drug case had not been justified by Article 5 § 1 (c) of the Convention and that, consequently, the refusal by Icelandic courts to grant her compensation for these measures violated Article 5 § 5. Secondly, she alleged that her right under Article 6 § 2 to be presumed innocent until proven guilty of the commission of an offence had been violated in that the Supreme Court had rejected her compensation claim on the grounds that “she was not deemed more likely to be innocent than guilty of the conduct with which she was charged.” On 9 September 1998 the Commission (Second Chamber) decided to declare the first complaint inadmissible, finding that it had been introduced out of time (former Article 27 § 3) and to give notice of the second complaint to the Government and invited them to submit their observations on its admissibility and merits. The Government submitted their observations on 14 December 1998, to which the applicant replied on 8 February 1999.

4. On 24 August 1999 the Court declared this remaining part of the application admissible.

5. On 23 March 2000, after an exchange of correspondence, the Section Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. At a meeting with the Section Registrar on 12 May 2000 the applicant’s representative and the Agent of the Government agreed to reach a friendly settlement and submitted a joint formal declaration setting out the terms.

THE FACTS

6. At the end of April 1989 the police in Reykjavík commenced the investigation of a drug case relating to importation and distribution of almost one kilogram of cocaine, which

apparently had been transported to Iceland at the end of October or beginning of November 1988. A large number of people were interrogated in the course of the investigations.

On 11 May 1989 the applicant and her co-habitant, P, were arrested. P was one of the principal suspects of the alleged drug offences. P was kept in custody but the applicant was released during the following night. On 17 May 1989 she was interrogated as a suspect. She denied having any knowledge of the alleged drug offences. On 2 June 1989 she was again interrogated, following which she was arrested. Pursuant to orders of 3 June and 16 June 1989 by the Criminal Court for Drug Cases (*sakadóm í ávana – og fíkniefnamálum*), she was detained on remand until 5 July 1989.

7. In the investigation of the drug case X and Y were also suspected of being the principal offenders. On 11 October 1989 P. was charged with having instigated and organised the acquisition of cocaine and its transport to Iceland and for having, before X's trip to the United States of America (the U.S.A.), delivered to him 8,000 U.S. Dollars jointly owned by them. He was also charged with having sent X more money, 5,000 Dollars, to the USA and for having retrieved 970 grams of cocaine hidden in the spare tyre of a car imported by X from the U.S.A. Finally, he was charged with organised sale and distribution of the substance in the period from the first half of December 1988 until April 1989.

By judgment of 26 March 1991 the Reykjavík District Court (*Héraðsdómur Reykjavíkur*) found P. guilty of the charges and sentenced him to 4 years' imprisonment pursuant to Section 173 a of the Penal Code, Act No 19/1940. X and Y were sentenced respectively to 3½ and 2½ years' imprisonment for having organised the cocaine importation with P. They did not appeal against this judgment to the Supreme Court.

8. On 30 October 1989 the applicant was charged with having delivered to her co-habitant P. USD 666 for the purchase of cocaine and with having used cocaine during the period from December 1988 to early 1989. On 18 January 1993 the District Court acquitted the applicant of the charges. Its judgment was final.

9. On 29 June 1993 the applicant instituted civil proceedings against the Icelandic Government, requesting compensation for unlawful and unnecessary arrest and detention on remand. On 30 June 1994 the District Court rejected the applicant's claim.

10. On 30 November 1995 the Supreme Court upheld the District Court's judgment, giving the following reasons:

“As stated in the judgment appealed against, two charges were brought in the indictment against [the applicant]: having supplied money for the purchase of cocaine, and having used cocaine. The condition set out in the final provision of Section 150 (2) of Act No. 74/1974 is that the claimant is deemed more likely to be innocent than guilty. As regards the first charge, i.e. the supply of money for the purchase of cocaine, it is not contested that [the applicant] delivered to the man she lived with the said USD 666 in the morning of 12 October 1988, and that he handed them over to another person who was going to the U.S.A. the same day to buy cocaine. Witnesses have testified that [the applicant] was present when the money was delivered, and that they knew what it was to be used for. The question remains, then, whether [the applicant] has established that she is likely not to have known for what purpose the money was to be used. It cannot be seen from the facts of the case and the statements described in the Reykjavík District Court's judgment of 5 June 1990 (public prosecutor v. [P.]) that she is more likely to be innocent than guilty of this conduct. [The applicant] confessed to the use of cocaine and to having provided cocaine to others, and already for that reason she does not fulfil the requirements of Section 150 (2) of the above-mentioned Act as regards that conduct. This renders unnecessary an examination of the requirements of Section 150 (1) and a consideration of [the applicant's] statements in view of those requirements. The judgment appealed against is therefore to be sustained.”

11. When Act No. 36/1999 entered into force on 1 May 1999, the above-mentioned Section 150 of Act No. 74/1974 was abolished. The corresponding provision of the new Act (Section 175 § 1) provides for compensation to accused persons in the following terms:

“A claim for indemnification according to this Chapter may be granted if investigation has been discontinued or an indictment not issued because the conduct allegedly committed by the accused was

deemed not to be criminal or proof thereof could not be obtained, or if the accused was acquitted for this reason by a judgment from which appeal did not take place or could not have taken place. Indemnification may however be rejected or reduced if the accused caused or contributed to the measures on which he bases his claim.”

THE LAW

12. On 12 May 2000 the Court received the following declaration from the Government and the applicant:

“The Government of Iceland and [the applicant] have reached the following agreement in full and final settlement of the applicant’s claim.

1. That the Icelandic Government would pay [the applicant] ISK 1.500.000 on an *ex gratia* basis and in respect of legal costs ISK 1.800.000.

2. That [the applicant] undertakes, following payment of the stated amount and without being entitled to damages or other payments from the Icelandic State Treasury, to withdraw her application to the European Court of Human Rights and not to take legal action against the Republic of Iceland on account of the above matter before the courts of Iceland or international tribunals.

3. The above settlement is without prejudice to the question of liability under the Convention.

4. After the introduction of the application the contested Icelandic legal provision in this case, Section 150(2) of the Code of Criminal Procedure, Act No. 74/1974, was repealed by Act No. 36/1999, amending the Code of Criminal Procedure.

5. The Icelandic Government regrets the suffering caused to the applicant by the application of the contested legislation, in particular that it left open a doubt as to the applicant’s innocence and the correctness of the acquittal by the District Court.

6. We further undertake not to request the reference of the case to the Grand Chamber under Article 43 (1) of the Convention after the delivery of the Court’s judgment.”

13. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

14. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties’ undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 30 May 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O’Boyle Elisabeth Palm
Registrar President

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