BGE 20010927_48628_99 vom 27. September 2001

Bundesgericht (BGE), 2001-09-27, FR

Quelle: https://mcp.opencaselaw.ch/entscheid/bge_20010927_48628_99

FR: BGE 20010927_48628_99 du 27 septembre 2001

IT: BGE 20010927_48628_99 del 27 settembre 2001

Regeste

Regeste Diese Zusammenfassung existiert nur auf Französisch. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 6 par. 1 CEDH: Applicabilité à la déduction des prestations d'assistance accordés aux requérants d'asile du montant qu'ils ont versé à titre de sûretés. Il y avait un droit de caractère civil reconnu en droit suisse, à savoir le droit de propriété des requérants sur les montants déduits du salaire du premier d'entre eux. Le département a nié l'effet rétroactif du statut de réfugié, qui aurait dispensé les intéressés d'ouvrir un compte de sûretés et leur aurait permis de se voir rembourser l'argent versé; en outre, l'art. 41 de l'ordonnance 2 sur l'asile relative au financement prévoit que lorsqu'une personne a obtenu le statut de réfugié et l'autorisation de séjour correspondante, le montant du compte sûretés est transféré à la Confédération qui prépare un décompte et compense les montants payés avec ceux des prestations d'assistance. Dès lors, il n'y avait lieu à aucune contestation entre les droits des requérants et ceux de la Confédération. Conclusion: requête déclarée irrecevable.

Regeste DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 6 par. 1 CEDH: Applicabilité à la déduction des prestations d'assistance accordés aux requérants d'asile du montant qu'ils ont versé à titre de sûretés. Il y avait un droit de caractère civil reconnu en droit suisse, à savoir le droit de propriété des requérants sur les montants déduits du salaire du premier d'entre eux. Le département a nié l'effet rétroactif du statut de réfugié, qui aurait dispensé les intéressés d'ouvrir un compte de sûretés et leur aurait permis de se voir rembourser l'argent versé; en outre, l'art. 41 de l'ordonnance 2 sur l'asile relative au financement prévoit que lorsqu'une personne a obtenu le statut de réfugié et l'autorisation de séjour correspondante, le montant du compte sûretés est transféré à la Confédération qui prépare un décompte et compense les montants payés avec ceux des prestations d'assistance. Dès lors, il n'y avait lieu à aucune contestation entre les droits des requérants et ceux de la Confédération. Conclusion: requête déclarée irrecevable.

Regesto Questo riassunto esiste solo in francese. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 6 par. 1 CEDH: Applicabilité à la déduction des prestations d'assistance accordés aux requérants d'asile du montant qu'ils ont versé à titre de sûretés. Il y avait un droit de caractère civil reconnu en droit suisse, à savoir le droit de propriété des requérants sur les montants déduits du salaire du premier d'entre eux. Le département a nié l'effet rétroactif du statut de réfugié, qui aurait dispensé les intéressés d'ouvrir un compte de sûretés et leur aurait permis de se voir rembourser l'argent versé; en outre, l'art. 41 de l'ordonnance 2 sur l'asile relative au financement prévoit que lorsqu'une personne a obtenu le statut de réfugié et l'autorisation de séjour correspondante, le montant du compte sûretés est transféré à la Confédération qui prépare un décompte et compense les montants payés avec ceux des prestations d'assistance. Dès lors, il n'y avait lieu à aucune contestation entre les droits des requérants et ceux de la Confédération. Conclusion: requête déclarée

irrecevable.

Erwägungen

E. 1

Once the asylum proceedings have been concluded and the applicant's residence situation in Switzerland has been settled by means of a residence permit or a provisional stay, ... the Federal Office [for Refugees] shall order the transfer to the Confederation of the amounts to be paid back for social security and implementation.

E. 2

The Office shall furthermore order the final balance(Schlussabrechnung) and the transfer of any credit to an account mentioned by the applicant. The final balance shall be transmitted to the applicant subject to § 3.

E. 3

The applicants complain under Article 6 § 1 of the Convention that they did not have access to a court which decided whether or not the amounts paid into the closed account should be deducted from the welfare benefits obtained. They submit that the forced savings of CHF 5,023.40 which the authorities deducted amounts to a "civil right" within the meaning of Article 6 § 1 of the Convention. Erwägungen THE LAW 1. The applicants complain that they did not have access to a court. They invoke Article 6 § 1 of the Convention which states, insofar as relevant: "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by [a] tribunal ..." The Court must first examine whether this provision is applicable to the proceedings at issue. Article 6 § 1 of the Convention may be relied on by individuals who consider that an interference with the exercise of one of their civil rights is unlawful and complain that they have not had the possibility of submitting that claim to a court meeting the requirements of Article 6 § 1 (see the Le Compte, Van Leuven and De Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, p. 20, § 44). This right to a court extends only to "disputes" (" contestations " in the French text) over "civil rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law; Article 6 § 1 does not in itself guarantee any particular content for "civil rights and obligations" in the substantive law of the Contracting States. The "dispute" must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise (see the following judgments: Le Compte, Van Leuven and De Meyere v. Belgium, 23 June 1981, Series A no. 43, pp. 21-22, § 47; Fayed v. the United Kingdom, 21 September 1994, Series A no. 294-B, pp. 45-46, § 56; Masson and Van Zon v. the Netherlands, 28 September 1995, Series A no. 327-A, p. 17, § 44; Le Calvez v. France, 29 July 1998, Reports 1998-V, p. 1899, § 56). In the present case, the Court accepts that there existed a civil "right" recognised under Swiss law, namely the applicants' property rights in respect of the amounts deducted from the first applicant's salary by his employer and paid into the surety bank account. There remains the question whether there was a "dispute"(contestation) within the meaning of Article 6 § 1 of the Convention. In this respect, the Court notes that the issue before the Federal Department of Justice and Police, leading to its decision of 19 November 1998, was, not the amounts at issue to be paid back, but whether the applicants' status as refugees had retroactive effect. Thus, before the Federal Department the applicants claimed that, since their refugee status applied retroactively as from the beginning of their stay in Switzerland, and as refugees did

not have to provide for a surety, they were not obliged to open a surety bank account and the entire money set aside had, therefore, to be paid out to them. However, the Federal Department denied any such retroactive effect in its decision of the Federal Department of 19 November 1998. Indeed, the Court notes that Swiss law is unambiguous in this respect. Thus, Section 41 of the Asylum Act Ordinance excluded a retroactive effect in that it provided that, once a person had obtained refugee status and the concomitant residence permit, the amounts of the surety account would be transmitted to the Confederation which would prepare a final balance and compensate the amounts paid into the account with those incurred by means of Social welfare benefits obtained. In the Court's opinion, the applicable domestic law was clear in that it provided for no exception, and in particular not for the exceptions claimed by the applicants. There was, therefore, no room for a "dispute" between the applicants, as to their "rights", on the one hand, and the Swiss Confederation, on the other. It follows that Article 6 § 1 of the Convention is not applicable in the instant case. This part of the application is therefore inadmissible as being incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 35 §§ 3 and 4 of the Convention. 2. Under Article 1 of Protocol No. 1 and under Article 14 of the Convention taken together with Article 1 of Protocol No. 1 the applicants complain of the amount deducted for welfare benefits. However, Switzerland has not ratified Protocol No. 1. It follows that the remainder of the application is also inadmissible as being incompatible ratione personae with the provisions of the Convention, within the meaning of Article 35 §§ 3 and 4 of the Convention. For these reasons, the Court unanimously Entscheid Declares the application inadmissible. Erik FRIBERGH Christos ROZAKIS Registrar President