



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42197/98
by Ilaria SALVETTI
against Italy

The European Court of Human Rights, sitting on 9 July 2002 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOCHAROVA,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 5 May 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Ilaria Salvetti, is an Italian national, who was born in 1969 and lives in Caprino Veronese, Italy.

A. The circumstances of the case

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

In 1971 the applicant was struck down by paralysis, blindness and dysarthria as a result of the compulsory polio inoculation provided by Law no. 51 of 4 February 1966.

Section 2 of Law no. 210 of 25 February 1992 provided that people struck down by permanent illnesses as a result of compulsory inoculations were entitled to an allowance from the first day of the month following the claim and to a lump-sum payment. In fact, by a judgment of 22 June 1990 the Constitutional Court had declared Law no. 51 of 4 February 1966 unconstitutional because it did not provide for any fair compensation for illnesses as a result of compulsory polio inoculation.

On 13 January 1993 the applicant requested the compensation she was entitled to.

On 26 April 1995 the Ministry of Health established, on the basis of the applicant's claim, that she was entitled to an allowance of 14,107,590 Italian lire (ITL) per annum from 1 February 1993.

On 18 May 1995 ITL 32,917,655 were paid in arrears for the period from 1 February 1993 to 31 May 1995.

By a judgment of 18 April 1996 the Constitutional Court declared section 2 of Law no. 210 of 25 February 1992 unconstitutional because it did not provide for any compensation for the period between the date on which the cause of action arose and the award of the allowance.

In 1996, after the Constitutional Court's judgment, several decree-laws were issued and re-issued in order to resolve the matter of the retrospective compensation. The last decree-law no. 548 of 23 October 1996 converted into Law no. 641 of 23 October 1996 and later Law no. 238 of 25 July 1997 amended section 2 of Law no. 210 of 25 February 1992. According to the new section 2, in addition to the principal allowance and lump-sum payment already awarded, people injured by compulsory inoculations were entitled to a further compensation for the period between the date on which the cause of action arose and the award of the allowance, calculated for every year at 30% of that allowance, without statutory interest and monetary revaluation. Moreover, section 2 provided that people injured by multiple illnesses as a result of compulsory inoculations were entitled to additional compensation, to be determined by a decree of the Ministry of Health, of not more than 50% of the principal award.

On 20 July 1997 the applicant lodged an application with the County Court (*Pretura*) alleging that the decree-law's provisions were unconstitutional on the grounds of the arbitrary reduction of the retrospective compensation and requesting a declaration of her right to obtain it without any reduction. The applicant also alleged that the provision in relation to the additional award was unconstitutional, because it was determined in a different way from the sum awarded to disabled workers and ex-servicemen. In any case, the applicant requested a provisional order against the Ministry of Health to pay the retrospective compensation as determined by Law no. 210 of 25 February 1992 (that is, 30% of the principal award) and statutory interest from 1 February 1993 to 31 May 1995 on the principal allowance arrears.

The Ministry of Health asked for the applicant's requests to be dismissed.

The County Court provisionally ordered that Ministry of Health pay ITL 89,386,881 in retrospective compensation as determined by Law no. 210 of 25 February 1992.

By judgment of 30 January 1997 the County Court found the applicants' arguments concerning constitutionality to be manifestly ill-founded and ordered the Ministry of Health to pay ITL 88,877,817 in retrospective compensation as determined by Law no. 210 of 25 February 1992 and ITL 4,368,881 in statutory interest from 1 February 1993 to 31 May 1995 in principal allowance arrears. The Court also declared that the applicant was eligible for the additional compensation because of the multiple illnesses following the compulsory inoculation but did not fix the amount because the Ministry of Health's decree had not yet been issued.

The Ministry of Health lodged an appeal against the County Court's judgment.

The applicant asked for the appeal to be dismissed and her previous requests confirmed.

By judgment of 24 September 1998 the Labour Court upheld the County Court's judgment and ordered the Ministry of Health to pay additional compensation of 50% of the principal award.

B. Relevant domestic law

By judgment no. 307 of 22 June 1990 the Constitutional Court declared as follows:

Law no. 51 of 4 February (*polio compulsory inoculation*) is unconstitutional insofar as it does not provide, outside section 2043 of the civil code, for any fair compensation to be charged to the State for damage as a result of infection or other serious illness following compulsory polio inoculation which have struck down inoculated children or people who have personally and directly taken care of them.

This unconstitutional declaration (...) introduces a compensation for damage as direct result of compulsory medical treatment within the limits of a fair settlement which considers all the aspects of damage. This compensation is justified (...) by a balanced consideration of the principles of section 32 of the Constitution in relation to the solidarity between individuals and the collectivity, which justifies the imposition of medical treatment.

According to Section 1 of Law n. 210 of 25 February 1992:

Everyone struck down by illnesses or infirmities as a result of compulsory inoculations (...) is entitled to a compensation to be charged to the State on the conditions and in the ways established by the present law.

Section 2 of Law no. 210 of 25 February 1992 provided as follows:

The compensation (...) starts from the first day of the month following the claim.

By judgment no.118 of 18 April 1996 the Constitutional Court declared as follows:

Section 2, par. 2 and 3, par. 7 of Law no. 210 of 25 February 1992 is unconstitutional insofar as it denies the right of people struck down by illnesses as a result of polio compulsory inoculation or of people who have personally and directly taken care of them to a compensation to be charged to the State -outside the provision of section 2043 of the civil code- for the period between the date on which the cause of the action arose and the award of the allowance determined according to the law above.

(...) The individual cannot be expected to sacrifice his own health for the benefit of the whole community. The coexistence between the individual and the collective aspect of constitutional discipline of health as well as the duty of solidarity, established by section 2 of the Constitution, which ties the individual to the collectivity, but also the collectivity to the individual, imposes a proper supporting measure of fair compensation for damage to be arranged for people who have suffered damage as a result of compulsory medical treatment. The compensation must be paid independently of the one claimed by the part concerned, if the conditions of section 2043 of the civil code are satisfied. Whereas the defence against tort provided by the section above necessarily and fully pays also for health damages -(...)- the compensation at issue is not concerned with guilt but with the unbreakable duty of solidarity overhanging in this case on the collectivity and, in its place, on the State. Though this compensation could not be derisory and -(...)- must consider all the aspects of damage, it has equitable nature.

(...) This is a special duty. The issue for the collectivity is not only the duty to help people in trouble for any cause, but also the duty to compensate the sacrifice that someone can suffer for a benefit to the collectivity. It would be against principles of justice, such as results from section 32 of Constitution, in the light of the duty of solidarity of section 2 of Constitution, that people struck down were left to their own destiny and resources or that the damage at issue was considered an unforeseen event to be compensated with general instruments of public assistance, or that satisfaction for compensation requests of damaged people was subordinated to the existence of others' negligent behaviour which could be missing.

Section 2 of Law no. 210 of 25 February 1992, revised by Law no. 641 of 23 October 1996 and later by law no. 238 of 25 July 1997, provides as follows:

2. The allowance of par. 1 is integrated by a lump-sum payment corresponding to the special additional compensation of Law no. 324 of 27 May 1959 (...) and starts from the first day of the month following the claim (...) By claim and even if the allowance has been already given, a compensation is paid to people indicated in Section 1, par. 1 for the period between the date on which the cause of action arose and the award of the allowance, calculated for every year at 30% of the allowance, without statutory interest and monetary revaluation.

3.4.5.6 (...).

7. People injured by multiple illnesses with distinct disabling effects are entitled to an additional compensation, to be determined by a decree of the Ministry of Health, of not more than 50% of the allowance of par. 1 and 2.

COMPLAINTS

The applicant complains that Italian law imposes compulsory inoculations but does not provide for fair compensation for illnesses or infirmities as a result of them. In particular, she complains about the ceiling established by Law no. 210 of 25 February 1992 of the amount of the retrospective and additional compensation for which she is eligible. She relies on Articles 2 § 1, 5 § 1, 12 and 17 of the Convention.

THE LAW

The applicant complains about the obligation to undergo compulsory inoculations without fair compensation for damages as a result of them. In particular she complains about the ceiling established by Law no. 210 of 25 February 1992 of the amount of the retrospective and additional

compensation for which she is eligible. She relies on Articles 2 § 1, 5 § 1 and 17 of the Convention.

The Court considers that no issue arises under the Articles referred to by the applicant. However, it recalls that private life includes a person's physical and psychological integrity (No. 32647/96, decision 1/7/98, D. R. 94, pp. 91-93). Consequently the Court has examined the application under Article 8 of the Convention which provides as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The Court considers that compulsory inoculations as non-voluntary medical treatments amount to an interference with the right to respect for private life as guaranteed by Article 8 § 1 (see *Matter v. Slovakia* judgment of 5 July 1999, § 64, unpublished).

Insofar as the applicant's complaint should be understood as concerning the obligation to undergo compulsory inoculation as such, the Court notes that the circumstances relating to the inoculation at issue date back to 1971.

The Court observes that the recognition of the right of individual petition under Article 34 of the Convention took effect in respect of Italy on 1 August 1973. It recalls that, according to the generally recognised principles of international law, for all Contracting Parties, the Convention governs only facts which arose after it came into force in respect of the Party concerned.

Consequently, the circumstances relating to the inoculation in 1971 will not be taken into consideration by the Court as they fall outside its competence *ratione temporis*.

As to the complaint concerning the amount of compensation for health damages as a result of the compulsory inoculation, even assuming that the level of compensation is a relevant element when examining the necessity of the interference under Article 8 § 2, the Court nevertheless considers that this issue also falls outside its *competence ratione temporis*.

It remains to be examined whether the claim for compensation could raise an issue under Article 1 of Protocol No. 1 to the Convention which, insofar it is relevant, provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”.

In this respect the Court recalls that the Convention does not guarantee, as such, social and economic rights (see *Godfrey v. United Kingdom*, application no. 8542/79, Commission decision of 4 February 1982, Decisions and Reports (DR) 27, p. 94 and *Pančenko v. Latvia*, (dec.), no. 40772/98, 28 October 1999, unreported). Nor does the Convention grant a right to compensation for a health damage which took place before the Convention entered into force with respect to a particular State or before the right of individual petition was recognized with regard to that State.

It is true that the applicant is already entitled to a specific allowance because of her health damage. However, the Court considers that Article 1 of Protocol No. 1 cannot be interpreted as guaranteeing to the applicant an increase of this amount.

In all circumstances, the Court considers that even if the applicant could be said to have a right to compensation, it would not imply compensation of a specific level.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President