



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

COURT (CHAMBER)

CASE OF FOTI AND OTHERS v. ITALY (ARTICLE 50)

(Application no. 7604/76; 7719/76; 7781/77; 7913/77)

JUDGMENT

STRASBOURG

21 November 1983

In the case of Foti and others,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court*, as a Chamber composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. R. RYSSDAL,
Mr. W. GANSHOF VAN DER MEERSCH,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. J. PINHEIRO FARINHA,
Mr. C. RUSSO,
Mr. R. BERNHARDT,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 25 October 1983,

Delivers the following judgment, which was adopted on that date, on the application in the present case of Article 50 (art. 50) of the Convention:

PROCEDURE AND FACTS

1. The present case was referred to the Court on 20 May 1981 by the European Commission of Human Rights ("the Commission"). The case originated in four applications (nos. 7604/76, 7719/76, 7781/77 and 7913/77) against the Italian Republic lodged with the Commission in 1976 and 1977 by four Italian nationals, Mr. Benito Foti, Mr. Felice Lentini, Mr. Demetrio Cenerini and Mr. Giovanni Gulli.

2. By judgment of 10 December 1982, the Court held that there had been a breach of Article 6 § 1 (art. 6-1) of the Convention, in that the applicants' cases (in French: "causes") had not been heard within a reasonable time (Series A no. 56, paragraphs 50-77 of the reasons and point 3 of the operative provisions, pp. 18-24).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50) in the present case. Accordingly, as regards the facts, the Court will confine itself here to giving the pertinent details; for further particulars, reference should be made to paragraphs 10 to 30 of the above-mentioned judgment (*ibid.*, pp. 7-11).

3. At the hearings on 21 April 1982, counsel for the applicants had stated that, should the Court find a violation of the Convention, their clients

* Note by the registry: In the version of the Rules applicable when proceedings were instituted. A revised version of the Rules entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date.

would be claiming just satisfaction under Article 50 (art. 50); counsel had given certain general indications as to the nature of the satisfaction sought. The Italian Government ("the Government") had not taken a stand on this issue.

In its judgment of 10 December 1982, the Court reserved the question. The Commission was invited to submit to the Court, within the coming two months, its written observations and, in particular, to notify the Court of any friendly settlement at which the Government and the applicants might have arrived (paragraphs 79-80 of the reasons and point 5 of the operative provisions, *ibid.*, pp. 24-25).

4. This time-limit was extended by the President of the Court on 3 February, 25 March and 19 May 1983.

On 16 June, the Secretary to the Commission informed the Registrar that a friendly settlement had been arrived at between the Government and the applicants other than Mr. Cenerini.

5. By Order of 20 June 1983, the President directed that the Agent of the Government should have until 20 July 1983 to submit his observations.

6. On 7 and 29 July respectively, the Secretary to the Commission transmitted to the Registrar copies of two settlement agreements signed on 7 June 1983 by a Government representative and by Mr. Foti and Mr. Lentini. Under these agreements, the Government was to pay to each of those applicants the sum of six million Lire, part of which was destined for their lawyers (one million for Mr. Foti's and two million for Mr. Lentini's); for their part, the applicants and their counsel declared that they had no further claims.

7. By letter of 18 July 1983, the Secretary to the Commission indicated that Mr. Cenerini was claiming one hundred million Lire as compensation for the loss of his employment: the applicant, who had been working on a temporary basis for the postal authorities, alleged that the proceedings pending against him had prevented his being appointed as a postman on the established staff and that he had been unable to apply for subsequent vacancies as the qualifications had changed in the meantime.

8. As regards Mr. Gulli, the Secretariat of the Commission transmitted to the Registrar, on 4 and 22 August and 9 September 1983, copies of three letters from the applicant's representative and of a communication from the mayor of Reggio Calabria. These disclosed that the Reggio Calabria municipality had offered Mr. Gulli, with effect from November 1973, a job as a street-sweeper and that he accordingly considered that he had received satisfaction, "albeit only partial". However, he sought payment to his lawyer, Mr. Corigliano, of the sum of fifteen million Lire for fees and expenses, from which the latter would pay two million Lire to a colleague who had assisted him as an expert in labour law.

9. Comments by the Government on the situation of the four applicants were received at the registry on 4 October 1983.

10. Mr. R. Ryssdal and Mr. W. Ganshof van der Meersch, substitute judges, replaced Mr. D. Evrigenis and Sir Vincent Evans, who were prevented from taking part in the further consideration of the case (Rules 22 § 1 and 24 § 1 of the Rules of Court).

11. Having consulted, through the Registrar, the Agent of the Government and the Delegate of the Commission, the Court decided on 25 October 1983 that there was no call to hold hearings.

AS TO THE LAW

12. Article 50 (art. 50) of the Convention reads as follows:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

I. MR. FOTI AND MR. LENTINI

13. Since its judgment of 10 December 1982, the Court has been informed of agreements reached between the Italian Republic and Mr. Foti and Mr. Lentini. As required by Rule 50 § 5 of its Rules, the Court has verified the "equitable nature" of these agreements and, having regard to the absence of objection on the part of the Commission's Delegate, it entertains no doubts on the matter. Accordingly, striking the case out of the list proves to be justified as regards these two applicants (see, *mutatis mutandis*, Rule 47 § 2 of the Rules of Court).

II. MR. GULLI

14. In the case of Mr. Gulli, the evidence before the Court includes copies of two letters, one from Mr. Corigliano, dated 21 July 1983 and countersigned by his client on the following day, and the other from the mayor of Reggio Calabria, dated 9 August 1983 and informing Mr. Gulli that he would be engaged (see paragraph 8 above). Having regard to these documents and to the absence of objection on the part of the Commission's Delegate, the Court finds that the partial agreement thus reached is of an "equitable nature", within the meaning of Rule 50 § 5 of the Rules of Court.

15. There remain the fees and expenses, amounting to fifteen million Lire, claimed for the applicant's lawyer (see paragraph 8 above).

In the view of the Commission's Delegate, this claim "seemed at first sight excessive". The Government stated that they shared this opinion, especially as the applicant had been granted free legal aid.

16. It is true that Mr. Gulli did have the benefit of legal aid before the Commission and then, after the reference of the case to the Court, in his relations with the Delegate (addendum to the Commission's Rules of Procedure). He may nevertheless have incurred liability to pay to his lawyer an amount greater than that received by way of legal aid. Indeed, this was not denied by the Government. What the Government in fact contested was not the principle of the claim but rather its quantum; moreover, they have agreed to make Mr. Foti and Mr. Lentini a payment destined for their respective lawyers (see paragraph 6 above), even though these applicants also had been granted legal aid in Strasbourg. However, in the absence of further details and supporting vouchers, the Court shares the Commission's view that the amount claimed for Mr. Corigliano is excessive.

In the light of these various considerations, Mr. Gulli should be awarded, in respect of lawyer's fees and expenses, a sum assessed on an equitable basis at one million Lire.

III. MR. CENERINI

17. Mr. Cenerini sought one hundred million Lire as compensation for the loss of his employment (see paragraph 7 above).

In the opinion of the Commission's Delegate, the fact that the applicant was not appointed as a member of the postal authorities' permanent staff was "the result of a number of factors and was only partly due to the length of the criminal proceedings against him"; accordingly, the amount claimed "seemed too high".

The Government, for their part, expressed the hope that Mr. Cenerini would be able to find work; however, they considered that in comparison with the settlements arrived at in the cases of the three other applicants, his claim was excessive.

18. The Court notes that Mr. Cenerini has adduced hardly any evidence in support of his claim and, notably, has not specified how it has been calculated; this being so, the evaluation of the alleged loss is problematical.

The applicant is nonetheless entitled to compensation for damage resulting from the fact that the "reasonable time" referred to in Article 6 § 1 (art. 6-1) of the Convention was exceeded. Taking due account of the views stated by the Delegate of the Commission and the Agent of the Government, the Court will make an assessment on an equitable basis, as is required by Article 50 (art. 50). It considers that Mr. Cenerini should be awarded satisfaction in the sum of ten million Lire.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Decides to strike the case out of its list as regards Mr. Foti and Mr. Lentini;
2. Takes formal note of the partial settlement reached in the case of Mr. Gulli;
3. Holds that the Italian Republic is to pay:
 - (a) to Mr. Gulli, in respect of lawyer's fees and expenses, the sum of one million (1,000,000) Lire;
 - (b) to Mr. Cenerini, for damage suffered, the sum of ten million (10,000,000) Lire;
4. Rejects the remainder of Mr. Gulli's and Mr. Cenerini's claims.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, this twenty-first day of November, one thousand nine hundred and eighty-three.

Gérard WIARDA
President

Marc-André EISSEN
Registrar