



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

COURT (CHAMBER)

CASE OF GODDI v. ITALY

(Application no. 8966/80)

JUDGMENT

STRASBOURG

9 April 1984

In the Goddi case,

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. G. LAGERGREN,

Mr. L. LIESCH,

Mr. F. GÖLCÜKLÜ,

Mr. B. WALSH,

Mr. C. RUSSO,

Mr. J. GERSING,

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

Having deliberated in private on 23 June 1983 and 29 March 1984,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission"). The case originated in an application (no. 8966/80) against the Italian Republic lodged with the Commission on 1 May 1980 under Article 25 (art. 25) of the Convention by an Italian citizen, Mr. Francesco Goddi.

2. The Commission's request was lodged with the registry of the Court on 6 January 1983, within the period of three months laid down by Articles 32 para. 1 and 47 (art. 32-1, art. 47). The request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the Italian Republic recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 3 (c) (art. 6-3-c).

3. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant expressed the wish to take part in the proceedings pending before the Court and appointed a lawyer for this purpose (Rule 30).

4. The Chamber of seven judges to be constituted included, as ex officio members, Mr. C. Russo, the elected judge of Italian nationality (Article 43

* Note by the registry: The revised Rules of Court, which entered into force on 1 January 1983, are applicable to the present case.

of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 para. 3 (b) of the Rules of Court). On 28 January 1983, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. M. Zekia, Mr. G. Lagergren, Mr. F. Gölcüklü, Mr. B. Walsh and Mr. J. Gersing (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr. L. Liesch, a substitute judge, replaced Mr. Zekia, who was prevented from taking part in the consideration of the case (Rules 22 para. 1 and 24 para. 1).

5. On 1 March 1983, Mr. Wiarda - who had assumed the office of President of the Chamber (Rule 21 para. 5) - decided, after consulting, through the Registrar, the Agent of the Italian Government, ("the Government"), the Commission's Delegate and the applicant's lawyer on the necessity for a written procedure, that there was no call for memorials to be filed (Rule 37 para. 1).

On the same date and on 12 April, the Registrar, acting on the President's instructions, requested the Commission to produce the observations, information and documents which it had received from the Government and the applicant, this material was supplied on 7 March and 22 April.

6. After consulting, through the Registrar, the Agent of the Government, the Commission's Delegate and the applicant's lawyer, the President directed on 26 May that the oral proceedings should open on 20 June 1983 (Rule 38).

On 16 June, the President granted the Agent of the Government and the applicant's lawyer leave to use the Italian language (Rule 27 paras. 2 and 3).

7. By a "memorial by way of unsolicited intervention", received at the registry on 17 June, the Council of the Rome Bar Association (Consiglio dell'ordine degli avvocati e procuratori di Roma) sought leave to take part in the proceedings. This request was refused by the President on the same day since it had been made at too late a stage (Rule 37 para. 2).

8. The hearings were held in public at the Human Rights Building, Strasbourg, on the appointed day. Immediately before they opened, the Court had held a preparatory meeting.

There appeared before the Court:

- for the Government

Mr. A. SQUILLANTE, Section President

at the Consiglio di Stato, head of the Diplomatic Legal

Service of the Ministry of Foreign Affairs,

Agent,

Mrs. C. ANTONELLI, Ministry of Foreign Affairs,

Mr. M. DI STEFANO, avvocato

at the Rome Bar,

Counsel;

- for the Commission

Mr. S. TRECHSEL,

Delegate;

- for the applicant

Mr. G. SANGERMANO, avvocato,

Counsel.

The Court heard addresses by Mr. Trechsel for the Commission, Mr. Sangermano for the applicant and Mr. Squillante for the Government, as well as their replies to its questions.

9. On 19 and 21 July, Mr. Goddi's lawyer transmitted to the Court his client's claims under Article 50 (art. 50) of the Convention.

In accordance with the President's directions, the registry received, on 17 and 26 August 1983 respectively, the observations of the Government and of the Commission's Delegate on this issue.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

10. Mr. Francesco Goddi, an Italian citizen born in 1951, is a shepherd. He resides at San Venanzo (Province of Terni).

11. On 6 June 1975, the applicant was tried, together with a certain Mr. F., by the Forlì Regional Court in connection with various offences. As regards some of the charges (threatening use of arms, unauthorised possession and carrying of arms and ammunition), he was sentenced to eighteen months' imprisonment (reclusione) and a serious-offence fine (multa) of 300,000 Lire; on the other charges (unauthorised possession and carrying of military weapons, causing damage to property, causing a dangerous explosion in an inhabited area), he was acquitted for want of sufficient evidence.

12. The offenders, the public prosecutor (procuratore della Repubblica) and the senior public prosecutor (procuratore generale) attached to the Bologna Court of Appeal all appealed. Mr. Goddi's grounds of appeal were drafted by one of the two lawyers who had defended him at first instance, namely Mr. Monteleone.

The Bologna Court of Appeal set the hearing down for 30 November 1976, but Mr. Monteleone did not appear, although he had been notified of the date. The Court of Appeal assigned an officially-appointed lawyer, a Mr. Maio, to act for the applicant and then adjourned the proceedings indefinitely for other procedural reasons. The President subsequently decided that the hearing should be held on 9 July 1977. On that day, the Court of Appeal once more ordered an adjournment, since Mr. F. had not been notified of the date. The record of the sitting discloses that Mr. Goddi appeared before the Court assisted by a new lawyer of his own choosing, Mr. Bezicheri, but not whether the latter was the only lawyer representing the applicant at that time.

13. On 20 September 1977, the President of the Court of Appeal set the adjourned hearing down for 3 December. Three days later, the Bologna senior public prosecutor asked the Orvieto public prosecutor, in whose district the applicant was resident, to notify the latter accordingly and to make the necessary arrangements for transporting him to Bologna should he be under arrest.

The bailiff was unable to serve the summons either on Mr. Goddi himself or on a person duly authorised by law to accept it and therefore lodged it at the town hall; the bailiff informed the applicant both by notice left at his home and by registered letter with acknowledgment of receipt. The letter, which had been posted on 5 October 1977, was collected by the applicant in person on 7 October.

On 29 October, pursuant to a warrant issued by the Forlì public prosecutor, Mr. Goddi was arrested and placed in custody in Orvieto in order to serve a sentence of six months' imprisonment imposed on him by the Forlì Regional Court on 3 May 1976.

14. The hearing of 3 December 1977 was held in the absence not only of the applicant and his lawyer but also of the party seeking damages, the co-accused and his lawyer, and the three witnesses who had been summoned. The Court of Appeal was, in fact, unaware of Mr. Goddi's recent arrest and declared him to be unlawfully absent (contumace).

The latter asserts, without adducing any proof that he had told the authorities of the criminal proceedings pending against him and of the date of the hearing - which assertion the authorities deny - but that they made no arrangements to enable him to attend.

Mr. Bezicheri failed to appear, since he had not received the notification: it had been sent to Mr. Monteleone and probably also to Mr. Ronconi, the other lawyer who had defended the applicant at first instance. According to his own evidence, Mr. Bezicheri learnt of the hearing only on 5 December, two days after the event, when relatives of his client sought information from him as to the progress of the proceedings.

15. At the hearing on 3 December, the Court of Appeal assigned another lawyer, Mr. Straziani, to act for Mr. Goddi. The public prosecutor's office sought an adjournment so that the witnesses who should have been present on that day (see paragraph 14 above) could attend. After deliberating in private, the Court of Appeal refused this request and resumed the proceedings.

As regards Mr. Goddi, the public prosecutor's office submitted that he should be convicted on the charges which the Forlì Regional Court had dismissed for want of sufficient evidence and that the remainder of the first-instance judgment should be confirmed. Mr. Straziani did no more than refer back to the grounds of appeal, which had been drafted by Mr. Monteleone.

The hearing was concluded on the same day. The Court of Appeal accepted the senior public prosecutor's submissions and imposed on the applicant heavier sentences, namely four years' imprisonment and a serious-offence fine of 500,000 Lire, together with three months' "detention" (arresto) and a minor-offence fine (ammenda) of 30,000 Lire.

16. The applicant appealed on points of law; two of his grounds of appeal related to his own and his lawyer's absence at the hearing on 3 December 1977.

The Court of Cassation dismissed the appeal on 8 November 1979. It held that the notification sent to Mr. Monteleone satisfied the requirements of Article 410 of the Code of Criminal Procedure (see paragraph 19 below). As to the finding that Mr. Goddi had been unlawfully absent, the Court of Cassation noted that the appeal court had been unaware of the impediment on which he relied.

II. RELEVANT LEGISLATION AND CASE-LAW

A. Presence of the accused at the hearing

17. Article 427 of the Code of Criminal Procedure reads as follows:

"An accused who is under arrest shall attend the hearing free from physical restraint, unless precautions are necessary to obviate the risk of escape or violence.

If at any time the accused refuses to attend and none of the circumstances contemplated in Article 497 obtains, the court shall direct that the proceedings are to continue as though he were present; in that event, he shall for all purposes be represented by the defence counsel.

..."

Under Article 22 of the regulations on the application of the same Code, it is for the public prosecutor's office to request that an accused who is in custody be escorted to the hearing.

18. The accused may, by written declaration, decline to appear. If he does not decline, the rules concerning his participation and his assistance or representation by a defence counsel must always be complied with, failing which the proceedings will be null and void (Article 185). However, the Court of Cassation has held that this ground of nullity does not apply if the court was unaware that the person concerned was in custody (2nd Chamber, 30 October 1972, no. 1267, 1974 Reports, p. 2403).

Under Article 497 of the Code of Criminal Procedure, where an accused, even if he is in custody, cannot attend the hearing on account of a legitimate impediment, the court has to adjourn the proceedings unless he agrees to their continuing without him. However, according to Article 498, if the

impediment is not a legitimate one and if the notifications have been duly effected, the court has to order that judgment shall be rendered in absentia.

B. Notification of the date of the hearing

19. The Code of Criminal Procedure lays down that both the accused and his defence counsel shall be informed on the date of the hearing.

As regards notification to the lawyer, Article 410 provides:

"In cases before a regional court, an assize court, a court of appeal or an appel court of assize, the registrar shall ensure that the date fixed for the oral proceedings is notified in writing to the defence counsel at least eight days in advance ..."

The summons to appear is null and void if this Article has not been complied with (Article 412).

On the other hand, the Court of Cassation, taking its decision in plenary session, held on 7 February 1981 that where an accused is represented by several lawyers it suffices to address the notice to appear to one of them only (Murdocca and Others judgment).

C. Participation of defence counsel in the hearing

20. Article 125 of the Code of Criminal Procedure provides, *inter alia*, that the proceedings shall be null and void if the accused did not have the assistance of defence counsel; there is an exception in the case of an offence punishable by a minor-offence fine not exceeding 3,000 Lire or "detention" for not more than one month, even if these penalties are imposed together. During the trial, the accused cannot have more than two defence counsel.

Under Article 133, third paragraph, of the same Code, if the accused has changed the defence counsel of his choice or simply withdrawn his instructions, the change or withdrawal is of no effect if the judge or the public prosecutor's office investigating the case is not informed thereof; during the oral proceedings, such a change or withdrawal is effected by means of a declaration recorded in the minutes.

21. If the accused has not appointed a defence counsel or if the appointed counsel fails to fulfil his obligations, a lawyer will be officially assigned by the court (Article 128, first and last paragraphs, of the Code of Criminal Procedure).

22. The Court of Cassation, for its part, has held that a lawyer loses his status of defence counsel if he does not take part in the oral proceedings and does not arrange to be replaced (5th Criminal Chamber, 26 March 1975, Canistracci). The Court of Cassation stated:

"In that event, the accused will be defended by a lawyer officially assigned to him, unless he renews his instructions to his previous counsel: failing such renewal, (the latter) cannot lodge an appeal, this rights being reserved to the defence counsel who

assisted or represented the accused during the proceedings. Accordingly, notice of a further hearing must be served on the officially-assigned defence counsel ..."

PROCEEDINGS BEFORE THE COMMISSION

23. In his application of 1 May 1980 to the Commission (no. 8966/80), Mr. Goddi alleged that he had not received a fair hearing because he had not had legal assistance of his own choosing and because the Bologna Court of Appeal had, wrongly in his view, declared him to be unlawfully absent. He relied on Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c) of the Convention.

24. On 5 March 1982, the Commission declared the application admissible, after examining it solely under paragraph 3 (c) (art. 6-3-c).

In its report of 14 July 1982 (Article 31 of the Convention) (art. 31), the Commission expressed the unanimous opinion that there had been a violation. The full text of the Commission's opinion is reproduced as an annex to the present judgment.

FINAL SUBMISSIONS MADE TO THE COURT

25. At the hearings of 20 June 1983, the Court was requested by the Government to hold that there had been no breach of Article 6 para. 3 (c) (art. 6-3-c) in the present case; by the applicant to find that there had been an "infringement of the rights of the defence and, hence, of human rights"; and by the Commission to confirm its opinion.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 3 (c) (art. 6-3-c)

26. Under Article 6 para. 3 (c) (art. 6-3-c) of the Convention, "everyone charged with a criminal offence" is entitled

"to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require".

According to the applicant, the hearing of 3 December 1977 before the Bologna Court of Appeal was held in conditions that were incompatible with the above-cited paragraph. He maintained that this was so for three

reasons: he had not been put in a position to appear at the hearing himself; he had been deprived of the services of the lawyer of his own choosing, by reason of the fact that the date of the hearing had been notified to Mr. Monteleone, who was no longer acting for him, and not to Mr. Bezicheri; and the defence provided by Mr. Straziani, the officially-appointed lawyer, had not been effective.

The Commission accepted this plea, in its essentials. The Government, on the other hand, contended that Mr. Goddi had been absent of his own free will; secondly, that the procedure followed by the Bologna Court of Appeal had not contravened the right relied on since Mr. Monteleone's instructions had not been expressly withdrawn; finally, that the judges could not supervise the manner in which Mr. Straziani carried out his duties.

27. Consideration of the present case must start with the observation that the aim pursued by Article 6 para. 3 (c) (art. 6-3-c) was not achieved before the Bologna Court of Appeal. Mr. Bezicheri did not attend the hearing on 3 December 1977 and was therefore unable to fulfil the task entrusted to him by the applicant. The latter, for his part, was also unable to appear: he was in prison in Orvieto. As for Mr. Straziani, who was designated on the spot as the officially-appointed lawyer, he was acquainted neither with the case-file nor with his client and did not know, *inter alia*, that the latter had been arrested on 29 October; in addition, he did not have the requisite time to prepare himself since the Court of Appeal refused the request for an adjournment and the hearing closed on the same day, the outcome being the imposition of heavier sentences than those imposed at first instance (see paragraph 15 above).

Hence, Mr. Goddi did not have the benefit on 3 December 1977 of a defence that was "practical and effective", as is required by Article 6 para. 3 (c) (art. 6-3-c) (see the Artico judgment of 13 May 1980, Series A no. 37 p. 16, para. 33).

28. Nevertheless, it has to be ascertained whether and to what extent this factual situation is attributable to the Italian State. In order to determine whether there was a breach of paragraph 3 (c) of Article 6 (art. 6-3-c) - the guarantees contained wherein are constituent elements, amongst others, of the general notion of a fair trial stated in paragraph 1 (art. 6-1) (see the same judgment, p. 15, para. 32) -, the Court has examined separately each limb of the complaint and then made an overall assessment.

29. Mr. Goddi complained first of all that the Orvieto public prosecutor's office and prison authorities omitted to take steps to ensure that he was able to go to Bologna for the hearing of 3 December 1977.

On 23 September 1977, the senior public prosecutor attached to the Bologna Court of Appeal asked the Orvieto public prosecutor to serve the summons to appear on the accused and to make the necessary arrangements for transporting him to Bologna should he be in custody. However, the applicant was still at liberty on that date; he was not arrested until 29

October 1977, on the instructions of the Forlì public prosecutor (see paragraph 13 above). Accordingly, all that the Orvieto public prosecutor's office had to do was to have the summons delivered to the applicant. Since it took the necessary measures in this connection - Mr. Goddi had notice of the summons on 7 October at the latest (*ibid.*) -, the public prosecutor's office cannot be regarded as responsible for the applicant's non-appearance before the appeal court; this was rightly pointed out by the Government.

As for the prison authorities, Mr. Goddi maintained that he told them of the criminal proceedings pending against him and of the date of the hearing, but this was contested by the Government (see paragraph 14 above). Neither the applicant nor the Government have adduced any evidence in support of their assertions and there is no other information before the Court which would enable it to resolve this disputed issue of fact. Accordingly, on this point, it is not established that the Italian authorities were at fault.

30. As regards the absence of the lawyer chosen by Mr. Goddi, the Court does not have to determine whether under Italian law there was an obligation to notify the date of the hearing both to Mr. Monteleone and to Mr. Bezicheri, or only to one of them and, if so, which; it has to ensure that the requirements of the Convention were satisfied.

From this perspective, the Court finds that the failure to notify Mr. Bezicheri was instrumental in depriving the applicant of a "practical and effective" defence (see the above-mentioned Artico judgment, Series A no. 37, p. 16, para. 33). The preceding phases of the proceedings should have led the Bologna Court of Appeal to believe that only Mr. Bezicheri could have provided a defence of this character on 3 December 1977: unlike Mr. Monteleone who had never appeared before the Court of Appeal, Mr. Bezicheri had taken part in the hearing of 9 July 1977 (see paragraph 12 above). Accordingly, it was necessary to send the notification in question to him.

When seen in terms of the Convention, the fact that Mr. Bezicheri was absent is all the more disturbing because Mr. Goddi was, in addition, absent himself; because Mr. Straziani, being unaware of the reasons for the accused's non-appearance, was unable to seek an adjournment under Article 497 of the Code of Criminal Procedure (see paragraph 18 above); and finally, because the penalties imposed on 6 June 1975 by the Forlì Regional Court might have been - and in fact were - increased (see paragraphs 11 and 15 above).

It is true that the situation complained of would not have occurred if the applicant had expressly withdrawn Mr. Monteleone's instructions, but under Italian law an implicit withdrawal, resulting from the appointment of a new lawyer, is sufficient. From the point of view of Article 6 para. 3 (c) (art. 6-3-c), no reproach can therefore be levelled against the applicant for his conduct.

31. As regards the defence provided for Mr. Goddi on 3 December 1977 by the officially-appointed lawyer, it is not the Court's task to express an opinion on the manner in which Mr. Straziani, a member of a liberal profession who was acting in accordance with the dictates of his conscience as a participant in the administration of justice, considered that he should conduct the case. On the other hand, the Court does have to determine whether the Bologna Court of Appeal took steps to ensure that the accused had the benefit of a fair trial, including an opportunity for an adequate defence.

In fact, Mr. Straziani did not have the time and facilities he would have needed to study the case-file, prepare his pleadings and, if appropriate, consult his client (cf. Article 6 para. 3 (b) of the Convention) (art. 6-3-b). Short of notifying Mr. Bezicheri of the date of the hearing, the Court of Appeal should - whilst respecting the basic principle of the independence of the Bar - at least have taken measures, of a positive nature, calculated to permit the officially-appointed lawyer to fulfil his obligations in the best possible conditions (see, *mutatis mutandis*, the above-mentioned Artico judgment, p. 16, para. 33). It could have adjourned the hearing, as the public prosecutor's office requested (see paragraph 15 above), or it could have directed on its own initiative that the sitting be suspended for a sufficient period of time.

No inference can be drawn from the fact that Mr. Straziani himself made no such request. The exceptional circumstances of the case - the absence of Mr. Goddi and the failure to notify Mr. Bezicheri - required the Court of Appeal not to remain passive.

32. Taken together, these considerations lead the Court to find that there was a failure to comply with the requirements of Article 6 para. 3 (c) (art. 6-3-c) at the stage of the hearing of 3 December 1977 before the Bologna Court of Appeal. This failure was not remedied by the Court of Cassation since its judgment of 8 November 1979 dismissed the applicant's appeal on points of law (see paragraph 16 above). There has therefore been a violation.

II. THE APPLICATION OF ARTICLE 50 (art. 50)

33. 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."

34. The applicant sought "20 million Lire (102,000 FF) by way of damages"; he based his claim on the sentences passed on him on 3 December 1977.

The Commission pointed out that the breach of Article 6 para. 3 (c) (art. 6-3-c) occurred during the course of the actual trial and not, as in the above-mentioned Artico case, when the appeal on points of law was being examined; it concluded from this that the effects of the violation could have been more acutely felt in the case of Mr. Goddi.

The Government, for their part, found that the applicant's claim was excessive.

Notwithstanding the foregoing, there was a measure of common ground between those appearing before the Court, in that all three of them left the matter to the Court's discretion.

The question is accordingly ready for decision (Rule 53 para. 1 of the Rules of Court).

35. The applicant maintained that if he had had an opportunity of having his defence adequately presented, he would certainly have received a lighter sentence and the Court of Appeal would probably have done no more than confirm the judgment of the Forlì Regional Court.

The Court cannot accept so categorical an allegation. However, it has to be remembered that the sentence imposed at first instance was substantially increased by the Bologna Court of Appeal; the outcome might possibly have been different if Mr. Goddi had had the benefit of a practical and effective defence. In the present case such a loss of real opportunities warrants the award of just satisfaction (see the above-mentioned Artico judgment, Series A no. 37, p. 20, para. 42).

To this has to be added the non-pecuniary damage which the applicant undoubtedly suffered as a result of the violation of Article 6 para. 3 (c) (art. 6-3-c).

36. None of the above elements of damage lends itself to a process of precise calculation. Taking them together on an equitable basis, as is required by Article 50 (art. 50), the Court considers that Mr. Goddi should be afforded satisfaction assessed at five million (5,000,000) Lire.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 para. 3 (c) (art. 6-3-c) of the Convention;
2. Holds that the respondent State is to pay to the applicant, under Article 50 (art. 50), the sum of five million (5,000,000) Lire.

Done in English and in French, at the Human Rights Building, Strasbourg, this ninth day of April, one thousand nine hundred and eighty-four.

For the President
Léon LIESCH

For the Registrar
Herbert PETZOLD
Deputy Registrar