



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

COURT (CHAMBER)

**CASE OF VERNILLO v. FRANCE**

*(Application no. 11889/85)*

JUDGMENT

STRASBOURG

20 February 1991

**In the Vernillo case\*,**

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 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 R. RYSSDAL, *President*,  
Mr J. CREMONA,  
Mrs D. BINDSCHEDLER-ROBERT,  
Mr L.-E. PETTITI,  
Sir Vincent EVANS,  
Mr A. SPIELMANN,  
Mr N. VALTICOS,  
Mr I. FOIGHEL,  
Mr A. LOIZOU,

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

Having deliberated in private on 26 October 1990 and 21 January 1991,

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

**PROCEDURE**

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 21 May 1990, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 11889/85) against the French Republic lodged with the Commission under Article 25 (art. 25) by two Italian nationals, Mr Generoso Vernillo and his wife Maria, née Siciliano, on 22 November 1985.

2. The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by

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\* The case is numbered 26/1990/217/279. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

\*\* As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

\*\*\* The amendments to the Rules of Court which came into force into 1 April 1989 are applicable to this case.

the respondent State of its obligations under Article 6 para. 1 (art. 6-1) as to "reasonable time".

3. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Rule 30). The Italian Government, having been informed by the Registrar of their right to intervene in the proceedings (Article 48, sub-paragraph (b), of the Convention and Rule 33 para. 3 (b)) (art. 48-b), did not indicate any intention of doing so.

4. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 May 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr J. Cremona, Mrs D. Bindschedler-Robert, Mr J. Pinheiro Farinha, Sir Vincent Evans, Mr N. Valticos, Mr R. Pekkanen and Mr A. Loizou (Article 43 in fine of the Convention and Rule 21 para. 4 (art. 43)). Subsequently Mr A. Spielmann and Mr I. Foighel, substitute judges, replaced Mr Pinheiro Farinha and Mr Pekkanen, who were unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

5. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and on 3 July 1990, having consulted - through the Registrar - the Agent of the French Government ("the Government"), the Delegate of the Commission and the lawyer for the applicants, decided that there was no need at that stage for memorials to be filed (Rule 37 para. 1) and that the oral proceedings should open on 24 October 1990 (Rule 38).

6. In a letter received on 19 July the Government stated that they were maintaining the objection of inadmissibility on the ground of failure to exhaust domestic remedies that they had raised in their observations to the Commission. On 17 August the President agreed to accept that letter, supplemented by the aforementioned observations, as a written statement satisfying the requirements of Rule 48 para. 1.

7. The applicants' claims under Article 50 (art. 50) of the Convention reached the registry on 29 August 1990.

8. On 21 September 1990 the Secretary to the Commission produced the memorials which the parties had filed with the Commission; the Registrar had asked him for them on the President's instructions.

9. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr J.-P. PUISSOCHET, Director of Legal Affairs,  
Ministry of Foreign Affairs,

*Agent,*

Mr L. CHOCHÉYRAS, Administrative Court judge,  
on secondment to the Department of Legal Affairs,  
Ministry of Foreign Affairs,  
Mr P. TITIUN, magistrat, on secondment  
to the Department of Legal Affairs, Ministry of Foreign  
Affairs,  
Mrs I. CHAUSSADE, magistrat, Department of Civil Affairs,  
Ministry of Justice, *Counsel*;  
- for the Commission  
Mr J.-C. SOYER, *Delegate*;  
- for the applicants  
Mr P. IORIO, avvocato, *Counsel*.

The Court heard addresses and statements by Mr Puissochet for the Government, Mr Soyer for the Commission and Mr Iorio for the applicants, as well as their replies to its questions.

## AS TO THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

10. Mr Generoso Vernillo and his wife Maria, née Siciliano, are Italian nationals who live at Pomigliano d'Arco, near Naples.

#### A. The background to the case

11. On 10 October 1967 they bought a three-room flat in Nice from Mr Ange Torzuoli and his wife (their aunt) for a down payment of 10,000 French francs (FRF) followed by monthly payments of FRF 100 to the vendors during their lifetimes and to the survivor of the two, without any reduction on the death of the first. The amount of the monthly payments was to be increased if the national family consumer price index rose by 5% or more. If a single instalment was not paid on the due date and a formal notice to pay remained without effect a month later, the contract would automatically be rescinded if those to whom the payments were due so wished.

12. On 18 July 1977 the applicants were served with a formal notice to pay arrears and co-ownership service charges, about FRF 7,000 in all, but they did not act on it.

### **B. The proceedings at first instance**

13. On 12 December 1977 Mr and Mrs Torzuoli summoned Mr and Mrs Vernillo before the Nice tribunal de grande instance. They asked the court to declare that the sale was automatically rescinded through the fault of the defendants. The latter filed pleadings on 5 May 1978 and the plaintiffs - who had been granted three extensions of time by the judge responsible for preparing the case for trial - did so on 20 September 1978.

On 27 March 1979 the applicants filed pleadings in reply. Their lawyer died and they instructed another one.

14. On 20 June 1979 Mr Torzuoli died. On 21 October 1980 his widow asked the court to formally acknowledge her wish to continue with the proceedings. On 14 January 1981 the judge responsible for preparing the case issued an order certifying that it was ready for trial.

15. The public hearing took place on 10 March 1981. In a judgment of 16 June 1981 the court refused to declare that the contract of sale was rescinded.

### **C. The appeal proceedings**

16. On 31 July 1981 Mrs Torzuoli appealed to the Aix-en-Provence Court of Appeal and the case was entered in the court's list on 28 September 1981. The respondents filed their pleadings on 11 March 1982 and the appellant filed hers on 13 April and 27 July 1982. The order certifying that the case was ready for trial was made on 18 March 1983, and the hearing took place on 27 April 1983.

17. On 29 June 1983 the Aix-en-Provence Court of Appeal reversed the decision of the court below and granted a declaration that the sale was rescinded through the fault of the applicants.

### **D. The proceedings in the Court of Cassation**

18. On 6 January 1984, this judgment having been notified to them, Mr and Mrs Vernillo appealed to the Court of Cassation.

On 4 June 1984 they filed their supplementary pleadings, and on 18 June these were served on the respondent, who replied on 2 November 1984. The same month, the case was allocated to the Third Civil Division and the reporting judge appointed. The latter produced his report on 7 December 1984 and the Advocate-General to be responsible for the case was assigned on 29 January 1985.

19. On 5 June 1985 the Court of Cassation dismissed the appeal on the following grounds:

"...

Having found that Mr and Mrs Vernillo had not within one month complied with the formal notice to pay of 18 July 1977, which contained a reminder of the clause providing for automatic rescission of the contract, and had not within the same period made any genuine, serious offers to pay at least the sums which they acknowledged they owed, the court below, in response to the submissions and except for the misinterpretation of the detailed figures produced by Mr and Mrs Vernillo, legitimately decided that the sale was rescinded.

Moreover, having noted that by the terms of the contract of sale any instalments due or other sums paid by the date of the formal notice to pay would, in the event of rescission of the sale, remain the property of the beneficiaries by way of compensation, without prejudicing their right to sue for recovery of any amounts due, the court below applied these contractual provisions without misinterpreting them.

For these reasons, the Court of Appeal's decision was justified in law.

..."

## II. THE RELEVANT LEGISLATION AND CASE-LAW

### A. The provisions of the new Code of Civil Procedure

20. The Government relied on the following three provisions of the New Code of Civil Procedure:

#### Article 373

"The proceedings may be voluntarily resumed in the manner prescribed for the submission of the grounds of defence.

If they are not resumed voluntarily, they may be recommenced by way of summons."

#### Article 780

"If counsel for one of the parties has not carried out the procedural steps within the time allowed, referral of the case to the court and termination of the preparation of the case for trial may be ordered by the judge [responsible for preparing the case for trial] of his own motion or on an application by another party; in the latter case the judge shall have a discretion to refuse the application in an order setting out his reasons and which shall be final."

#### Article 910

"The case shall be prepared for trial under the supervision of a judge of the division of the court to which it has been allocated, as provided in Articles 763-787 and in the following provisions.

(D[ecree] no. 85-1330, 17 Dec. 1985, Art. 12, with effect from 1 January 1986) Where a case appears to be urgent or to be ready for trial within a short time, the presiding judge of the division to which it has been allocated shall fix the date and time at which it will be called; on the appointed day, matters shall proceed as provided in Articles 760-762."

## **B. The remedy provided in Article L 781-1 of the Code of Judicial Organisation**

21. By Article L 781-1 of the Code of Judicial Organisation,

"The State shall be under an obligation to compensate for damage caused by any malfunctioning of the system of justice. This liability shall be incurred only in respect of gross negligence or a denial of justice.

... ."

This provision can be relied on not only in a non-contentious application (*recours gracieux*) to the Minister of Justice, but also - subsequently or at the outset - for the purpose of instituting contentious proceedings.

22. According to Ministry of Justice statistics, the Ministry received 267 applications between 1973 and 1987. Ninety-seven of these were successful; 134 were refused; no action was taken on 15 of them; and 21 were still under consideration at 31 December 1987. In 6 applications - of which 5 had failed and 1 was pending - the complaint concerned the length of proceedings.

23. During the same period, likewise according to the Ministry of Justice, 77 cases came before the courts. The plaintiffs were unsuccessful in 25 cases and successful in 19, the compensation awarded totalling FRF 16,294,573. Two claims had been settled and 31 applications remained to be heard.

In a bankruptcy case which had lasted for about seventeen years (*Fuchs c. Agent judiciaire du Trésor public*) the Paris Court of Appeal ordered the State to pay FRF 50,000 in damages. Its judgment of 10 May 1983 contained the following reasons:

"The court's delay in giving judgment and the persistent silence maintained by the bankruptcy judge and the court vis-à-vis the receiver of the Fuchs company amounted to a breach of duty, and the decision subsequently given on 3 June 1975 stemmed from an error in assessing the situation as submitted to the court.

The breach of duty and the error in assessment are particularly serious on account of the factual and procedural circumstances with which the court was fully acquainted and which clearly made it imperative to terminate rapidly a bankruptcy that was no longer justified. These were flagrant breaches amounting to gross negligence in the functioning of the system of justice and they entail the State's liability;

... ."

## PROCEEDINGS BEFORE THE COMMISSION

24. Mr and Mrs Vernillo applied to the Commission on 22 November 1985. They complained of the length of the civil proceedings brought against them in the Nice tribunal de grande instance on 12 December 1977; they claimed it was incompatible with Article 6 para. 1 (art. 6-1) of the Convention.

25. The Commission declared the application (no. 11889/85) admissible on 10 March 1989. In its report of 6 February 1990 (made under Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been a breach of Article 6 para. 1 (art. 6-1).

The full text of the Commission's opinion is reproduced as an annex to this judgment<sup>1</sup>.

## AS TO THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

26. The Government maintained, as they had before the Commission, that the applicants had not exhausted domestic remedies, since they had not brought an action for compensation against the State under Article L 781-1 of the Code of Judicial Organisation. They submitted that the applicants should have made a non-contentious application to the Minister of Justice and, if that was refused, should have asked the appropriate court to award them compensation in respect of the damage they alleged to have resulted from the failure to hear their case "within a reasonable time". Between 1973 and 1987 this remedy was resorted to by several people with complaints similar to the applicants', one of whom succeeded, not to mention several dozen applications relating to other complaints (see paragraphs 21-23 above).

The Commission having rejected this plea in its decision on the admissibility of the application, the Government pointed out that:

(a) there was no obligation to ascertain whether any really settled case-law existed as long as there was statutory provision for a remedy;

b) the effectiveness of such a remedy could not be assessed solely on the basis of the number of times the State had been ordered to pay compensation; and

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<sup>1</sup> Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 198 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

(c) at all events, the applicants were not alleging that such an action was bound to fail in view of settled case-law. It could not, therefore, be stated a priori that a delay of several years did not amount to gross negligence within the meaning of Article L 781-1 of the Code of Judicial Organisation.

It was for the national courts in the first instance to determine whether a given remedy was likely to afford any prospect of success. Were it otherwise, a vicious circle would result: the rarity of decisions against a State under a given provision would deter potential complainants from availing themselves of it and prompt them to apply directly to the Commission, so that there would be even fewer national decisions on the matter.

27. An action for damages may be relevant for the purposes of Article 26 (art. 26) of the Convention (see, among other authorities and *mutatis mutandis*, the Bozano judgment of 18 December 1986, Series A no. 111, p. 21, para. 49, and the de Jong, Baljet and van den Brink judgment of 22 May 1984, Series A no. 77, pp. 19-20, para. 39), but the only remedies which that Article (art. 26) requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see in particular the de Jong, Baljet and van den Brink judgment previously cited, *loc. cit.*).

Article L 781-1 of the Code of Judicial Organisation circumscribes the State's liability very narrowly. Furthermore, Mr and Mrs Vernillo did not claim to be the victims of a denial of justice or even of gross negligence, and it does not appear from the quite large number of decisions drawn to the Court's attention by the Government that the French courts have interpreted the concept of gross negligence sufficiently broadly to include, for example, every delay exceeding the "reasonable time" laid down in Article 6 para. 1 (art. 6-1) of the Convention.

The preliminary objection must accordingly be dismissed.

## II. ALLEGED VIOLATION OF ARTICLE 6 para. 1 (art. 6-1)

28. The applicants submitted that the civil action brought against them was not tried within a "reasonable time" as required by Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ... ."

The Government rejected this submission but the Commission accepted it.

### **A. Period to be considered**

29. The period to be considered began on 12 December 1977, when the applicants were summoned before the Nice tribunal de grande instance, and ended on 5 June 1985, when the Court of Cassation delivered its judgment. It therefore amounted to about seven and a half years.

### **B. Reasonableness of the length of the proceedings**

30. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, *inter alia*, the *Moreira de Azevedo* judgment of 23 October 1990, Series A no. 189, p. 18, para. 71).

As the Government emphasised, Article 2 of the new Code of Civil Procedure leaves the initiative to the parties: it is for them to "carry out the procedural steps in the manner and within the time prescribed". This does not, however, dispense the courts from ensuring compliance with Article 6 (art. 6) as to the "reasonable time" requirement (see, *mutatis mutandis*, the *Capuano* judgment of 25 June 1987, Series A no. 119, p. 11, para. 25). Article 3 of the Code moreover requires the court to see to it that cases proceed properly and gives it the power to set any necessary time-limits and make any necessary orders.

#### *1. Complexity of the case*

31. In the Government's submission, the case, although simple in nature, became rather complicated on account of special factors - the acceptance by Mr and Mrs Torzuoli of irregular payments of the monthly sums due, the refusal to cash certain money orders, the smallness of the monthly payments, the place of residence of the parties (in Italy, not France), the need to seek an expert opinion - and of the fact that the parties were related. The discrepancy between the judgments at first instance and on appeal was evidence of this.

32. Like the Commission and the applicants, the Court considers that in fact the case was not a very complex one.

#### *2. Conduct of the parties*

33. The Government argued that the delays complained of were accounted for mainly by the parties' conduct, which contributed decisively to the slowing down of the proceedings.

The applicants maintained, on the contrary, that they had shown due diligence.

34. The Court points out that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see, among other authorities, the *H. v. France* judgment of 24 October 1989, Series A no. 162, pp. 21-22, para. 55).

In the instant case, however, the parties showed little alacrity in filing their submissions.

Mr and Mrs Vernillo, the defendants, took more than four and a half months (12 December 1977 - 5 May 1978) and then over six months (20 September 1978 - 27 March 1979) in the tribunal de grande instance, five months in the Court of Appeal (28 September 1981 - 11 March 1982) and nearly five months in the Court of Cassation.

For their part, Mr and Mrs Torzuoli, the plaintiffs, took four and a half months to reply in the tribunal de grande instance (5 May - 20 September 1978); they filed their second set of appeal pleadings three and a half months after the first set (13 April - 27 July 1982); and during the appeal on points of law they took four and a half months to reply to the Vernillos' supplementary pleadings (18 June - 2 November 1984).

Furthermore, a year and four months elapsed before Mrs Torzuoli resumed the proceedings after her husband's death (20 June 1979 - 21 October 1980).

35. It therefore appears that the parties did much to prolong the proceedings.

### *3. Conduct of the judicial authorities*

36. The Commission considered that a "reasonable time" had been exceeded mainly owing to the conduct of the judicial authorities. In particular, the judge responsible for preparing the case for trial had not intervened in order to expedite the proceedings. Furthermore, it had taken the Court of Appeal nearly two months (from 31 July to 28 September 1981) to list the case and almost eight months (from 27 July 1982 to 18 March 1983) after Mrs Torzuoli's final set of pleadings had been filed to certify it as ready for hearing. The length of the proceedings in the Court of Cassation, however, was not regarded as being excessive.

37. The Government submitted that the French courts had acted without procrastination. The tribunal de grande instance had held its hearing less than two months after the judge responsible for preparing the case for trial made the order certifying that it was ready for hearing (14 January - 10 March 1981) and had given its judgment hardly more than three months later (16 June 1981); the Court of Appeal had given judgment approximately two months (27 April - 29 June 1983) after the hearing, which had taken place less than six weeks after the case was certified as ready for hearing (on 18 March 1983). Furthermore, the applicants were not justified in criticising the judge responsible for the preparation of the case at first instance for not having given Mr Torzuoli's widow a time-limit for

resuming the proceedings or in complaining of the aforementioned period of eight months, as Article 373, second paragraph, and Articles 780 and 910 of the new Code of Civil Procedure (see paragraph 20 above) afforded them a means of attempting to speed matters up in these two regards.

38. In requiring cases to be heard within a "reasonable time", the Convention underlines the importance of administering justice without delays which might jeopardise its effectiveness and credibility (see, among other authorities, the *H. v. France* judgment previously cited, Series A no. 162, pp. 22-23, para. 58). The Court, however, is not unaware of the difficulties which sometimes delay the hearing of cases by national courts and which are due to a variety of factors.

At least two periods might seem to be abnormal in the instant case: the one of just over five months from 14 January 1981 (when the order certifying that the case was ready for trial was made by the judge responsible for the preparation of the case) to 16 June 1981 (when judgment was given at first instance); and the other, of nearly eight months, from 27 July 1982 (when Mrs Torzuoli's final set of pleadings on appeal was filed) to 18 March 1983 (when the appeal was certified as ready for hearing).

39. Having regard to all the circumstances of the case and, more particularly, to the parties' responsibilities in the conduct of the trial (see paragraphs 30 and 34 above), these periods are not so long as to warrant the conclusion that the total duration of the proceedings was excessive. The Court therefore considers that the applicants' complaint is unfounded.

#### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objection;
2. Holds that there has been no breach of Article 6 para. 1 (art. 6-1).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 20 February 1991.

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar