



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

COURT (CHAMBER)

CASE OF SALESI v. ITALY

(Application no. 13023/87)

JUDGMENT

STRASBOURG

26 February 1993

In the case of Salesi v. Italy*,

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 R. BERNHARDT, *President*,

Mr Thór VILHJÁLMSSON,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Mr C. RUSSO,

Mr N. VALTICOS,

Mr S.K. MARTENS,

Mrs E. PALM,

Mr F. BIGI,

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

Having deliberated in private on 25 September 1992 and 2 February 1993,

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 13 April 1992, 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. 13023/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mrs Enrica Salesi, on 12 June 1987. In the proceedings before the Commission the applicant was designated by the initials "E.S." but she subsequently consented to the disclosure of her identity.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a

* The case is numbered 11/1992/356/430. 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.

decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30).

3. On 25 April 1992 the President of the Court decided that, pursuant to Rule 21 para. 6 and in the interests of the proper administration of justice, this case and the cases of Pizzetti, De Micheli, F.M., Trevisan, Billi and Messina v. Italy* should be heard by the same Chamber.

4. The Chamber to be constituted for this purpose included ex officio Mr C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, President of the Court (Rule 21 para. 3 (b)). On the same day, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Matscher, Mr L.-E. Pettiti, Mr N. Valticos, Mr S.K. Martens, Mrs E. Palm and Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

5. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Deputy Registrar, consulted the Agent of the Italian Government ("the Government"), the Delegate of the Commission and the applicant's lawyer on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 17 July 1992. By a letter of 23 July the Government stated that they wished to refer the Court to their observations before the Commission. On 13 August a deputy to the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

6. On 3 September the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

7. In accordance with the decision of the President, who had given the applicant leave to use the Italian language (Rule 27 para. 3), the hearing took place in public in the Human Rights Building, Strasbourg, on 21 September 1992. The Court had held a preparatory meeting beforehand. Mr R. Bernhardt, the Vice-President, replaced Mr Ryssdal, who was unable to take part in the further consideration of the case (Rule 21 para. 5, second sub-paragraph).

There appeared before the Court:

- for the Government

Mr G. RAIMONDI, magistrato,

on secondment to the Diplomatic Legal Service, Ministry of

Foreign Affairs,

Co-Agent,

Mr B. CAPPONI, magistrato,

* Cases nos. 8/1992/353/427 to 10/1992/355/429 and 12/1992/357/431 to 14/1992/359/433.

on secondment to the Ministry of Justice,	<i>Counsel;</i>
- for the Commission	
Mr G. SPERDUTI,	<i>Delegate;</i>
- for the applicant	
Mr G. ANGELOZZI, avvocato,	<i>Counsel.</i>

The Court heard statements and addresses by them, as well as replies to its question.

The Government's reply was supplemented by material received at the registry on 2 October 1992.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. Mrs Enrica Salesi lives at Pomezia (province of Rome). The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 15-17 of its report):

"15. On 28 February 1986 the applicant instituted proceedings against the Minister of the Interior before the Rome magistrate's court (pretore)",

seeking payment of a monthly disability allowance which the Lazio social-security department had refused her.

"16. Preparation of the case for trial began at the hearing of 21 May 1986, on which date the court ordered an expert opinion. The expert appointed took the oath at the hearing of 17 June 1986. At the end of the hearing held on 2 December 1986 the court ordered the Minister of the Interior to pay the allowance requested. The text of this decision was deposited with the registry on 16 December 1986.

17. On 21 April 1987 the Minister of the Interior appealed against the above decision and, on 5 May 1987, the President of the Rome District Court arranged for the appeal to be heard by the competent division of the court on 24 May 1989. On that date the Rome District Court dismissed the appeal and upheld the contested decision."

9. According to the information given to the Court by the applicant, the judgment was filed in the registry on 27 January 1990; the Minister appealed on points of law on 20 July, but the Court of Cassation dismissed the appeal in a judgment of 5 June 1991 that was filed in the registry on 10 March 1992.

II. RELEVANT DOMESTIC LAW

10. The applicant's claim was based on Law no. 118 of 30 March 1971 (Law no. 118/71), enacted pursuant to Article 38 of the Italian Constitution, which provides:

"All citizens who are unfit for work and lack the basic wherewithal to live shall be entitled to means of subsistence and welfare assistance.

...

The bodies and institutions set up or supported by the State shall be responsible for discharging the functions provided for in this Article.

..."

11. Under section 13 of Law no. 118/71, the State pays a monthly disability allowance (*assegno mensile*) to disabled ex-servicemen and civilians aged 18-64 who have been found to be more than two-thirds disabled and who are destitute.

12. As this is a compulsory welfare benefit, disputes over the existence of a right to the allowance come within the magistrate's labour jurisdiction, and trial procedure is governed by the provisions laid down for labour proceedings (Articles 442 and 444 of the Code of Civil Procedure).

PROCEEDINGS BEFORE THE COMMISSION

13. Mrs Salesi applied to the Commission on 12 June 1987. She complained of the length of the proceedings she had brought and relied on Article 6 para. 1 (art. 6-1) of the Convention.

14. The Commission declared the application (no. 13023/87) admissible on 2 July 1990. In its report of 20 February 1992 (made under Article 31) (art. 31), the Commission expressed the opinion, by thirteen votes to eight, that there had been a breach of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment*.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 257-E of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

GOVERNMENT'S FINAL SUBMISSIONS TO THE COURT

15. At the hearing the Government asked the Court to hold that there had been no breach of the Convention in this case.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

16. The applicant complained of the length of the proceedings she had brought in the civil courts against the State. She alleged a breach of 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 ..."

A. Applicability of Article 6 para. 1 (art. 6-1)

17. The applicant and the Commission both regarded this provision as applying in the instant case.

18. The Government maintained the opposite, submitting that the case presented features of public law only. Firstly, the right claimed derived from an ordinary statute and not from a contract of employment. Secondly, the subject-matter was exclusively a governmental one, since the State met the entire cost of financing the scheme. Lastly, entitlement to the disability allowances in question was not dependent on the payment of contributions.

19. The Court is here once again confronted with the issue of the applicability of Article 6 para. 1 (art. 6-1) to social security disputes. The question arose earlier in the cases of *Feldbrugge v. the Netherlands* and *Deumeland v. Germany*, in which it gave judgment on 29 May 1986 (Series A nos. 99 and 100). At that time the Court noted that there was great diversity in the legislation and practice of the member States of the Council of Europe as regards the nature of the entitlement to insurance benefits under social security schemes. Nevertheless, the development in the law that was initiated by those judgments and the principle of equality of treatment warrant taking the view that today the general rule is that Article 6 para. 1 (art. 6-1) does apply in the field of social insurance.

In the present case, however, the question arises in connection with welfare assistance and not, as in the cases previously cited, social insurance. Certainly there are differences between the two, but they cannot be regarded as fundamental at the present stage of development of social security law.

This justifies following, in relation to the entitlement to welfare allowances, the opinion which emerges from the aforementioned judgments as regards the classification of the right to social insurance benefits, namely that State intervention is not sufficient to establish that Article 6 para. 1 (art. 6-1) is inapplicable.

As in the two cases previously referred to, other considerations argue in favour of the applicability of Article 6 para. 1 (art. 6-1) in the instant case. The most important of these lies in the fact that despite the public law features pointed out by the Government, Mrs Salesi was not affected in her relations with the administrative authorities as such, acting in the exercise of discretionary powers; she suffered an interference with her means of subsistence and was claiming an individual, economic right flowing from specific rules laid down in a statute giving effect to the Constitution (see paragraph 10 above).

The protection of this basic right is, moreover, organised in such a way that at the judicial stage disputes over it come within the jurisdiction of the ordinary court, the labour magistrate's court (*pretore del lavoro*).

In sum, the Court sees no convincing reason to distinguish between Mrs Salesi's right to welfare benefits and the rights to social insurance benefits asserted by Mrs Feldbrugge and Mr Deumeland.

Article 6 para. 1 (art. 6-1) therefore applies in the instant case.

B. Compliance with Article 6 para. 1 (art. 6-1)

20. It remains to be determined whether or not there was a failure to try the case within a "reasonable time".

The applicant and the Commission said there was, whereas the Government denied it.

21. The period to be considered began on 28 February 1986, when proceedings were instituted against the Minister of the Interior in the Rome magistrate's court, and ended on 10 March 1992, when the Court of Cassation's judgment was filed (see, as the most recent authority, the Salerno v. Italy judgment of 12 October 1992, Series A no. 245-D, p. 55, para. 18). It therefore lasted a little over six years.

22. The reasonableness of the length of proceedings is to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment.

23. The Government relied on the applicant's conduct. At no time, they said, had she asked for her case to be dealt with more quickly; and by failing to notify the judgment of 24 May 1989 to the Minister of the Interior, she had prevented him from appealing on points of law within the "short" period of sixty days (see the Cesarini v. Italy judgment of 12 October 1992, Series

A no. 245-B, p. 25, para. 11). An additional factor was the Rome District Court's excessive workload.

24. The Court notes, firstly, like the Commission and the applicant, that the case was not a complex one and that Mrs Salesi's conduct did not substantially contribute to the length of the proceedings. These followed their course at a normal speed in the magistrate's court but not thereafter: on appeal the case remained dormant for over two years, the President of the District Court having on 5 May 1987 set it down for hearing by the appropriate division on 24 May 1989; and it is also difficult to understand why it took more than eight months and ten months respectively to make known the reasons supporting the District Court's and the Court of Cassation's judgments by filing the judgments in the relevant registries. As to the argument based on the backlog of cases in the appellate court, it must not be forgotten that Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements (see, among many other authorities, the *Tusa v. Italy* judgment of 27 February 1992, Series A no. 231-D, p. 41, para. 17).

25. That being so, and in view of what was at stake for the applicant, the Court cannot consider that the period of time which elapsed in this case was "reasonable".

There has therefore been a breach of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

26. Under Article 50 (art. 50),

"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."

A. Damage

27. Mrs Salesi sought, firstly, 7,000,000 Italian lire in respect of pecuniary damage and 4,000,000 lire in respect of non-pecuniary damage.

In the Government's submission, she had not sustained any pecuniary damage; she could have applied for enforcement of the judgment at first instance and, moreover, she had secured recognition of her entitlement to the disputed allowance and to the arrears, adjusted for inflation, together with interest at the statutory rate.

As to the non-pecuniary damage, the mere finding of a breach, if any, would in itself provide sufficient just satisfaction for the purposes of Article 50 (art. 50).

28. Like the Delegate of the Commission, the Court takes the view that the applicant undoubtedly sustained damage and that her claims are in no way excessive. It consequently allows them.

B. Costs and expenses

29. Mrs Salesi also sought 7,140,000 lire in respect of her costs and expenses relating to the proceedings before the Convention institutions.

In the absence of any objections on the part of the Government, the Court awards the amount sought in its entirety.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Article 6 (art. 6) applies in the instant case and that there has been a breach of it;
2. Holds that the respondent State is to pay to the applicant, within three months, 11,000,000 (eleven million) Italian lire in respect of damage and 7,140,000 (seven million one hundred and forty thousand) lire in respect of costs and expenses.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 February 1993.

Rudolf BERNHARDT
President

Marc-André EISSEN
Registrar