



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

COURT (CHAMBER)

CASE OF VENDITTELLI v. ITALY

(Application no. 14804/89)

JUDGMENT

STRASBOURG

18 July 1994

In the case of Vendittelli 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. RYSSDAL, *President*,

Mr Thór VILHJÁLMSSON,

Mr L.-E. PETTITI,

Mr B. WALSH,

Mr C. RUSSO,

Mr A. SPIELMANN,

Mrs E. PALM,

Mr A.N. LOIZOU,

Mr G. MIFSUD BONNICI,

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

Having deliberated in private on 24 February and 21 June 1994,

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 12 July 1993, 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. 14804/89) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Manlio Vendittelli, on 11 January 1989.

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 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) of the Convention and Article 1 of Protocol No. 1 (P1-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in

* Note by the Registrar. The case is numbered 24/1993/419/498. 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.

the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 25 August 1993, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr L.-E. Pettiti, Mr A. Spielmann, Mr J. De Meyer, Mrs E. Palm, Mr A.N. Loizou and Mr G. Mifsud Bonnici (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr B. Walsh, substitute judge, replaced Mr De Meyer, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Italian Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 8 December 1993. In a letter of 7 October 1993 the applicant's lawyer had said that he would not be filing a memorial. The Delegate of the Commission did not make any observations in writing.

5. On 10 November 1993 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. 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 February 1994. The Court had held a preparatory meeting beforehand.

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 E. SELVAGGI, Director of Human Rights,
Department of Criminal Affairs, Ministry of Justice,
Counsel;

- for the Commission

Mr S. TRECHSEL, *Delegate;*

- for the applicant

Mr A. SINAGRA, avvocato, *Counsel.*

The Court heard addresses by them and also replies to its questions.

7. In letters of 10 and 14 March 1994 the Government provided additional information.

AS TO THE FACTS

8. Mr Manlio Vendittelli, an architect, lives in Rome.

9. On 19 May 1986 the Rome municipal police (*vigili urbani*) sealed his flat, on the ground that he had infringed the town-planning regulations.

10. On 20 May 1986 the Rome magistrate (*pretore*) confirmed the sequestration (*sequestro*) and criminal proceedings were instituted against the applicant. Mr Vendittelli lodged three applications for release of his property from sequestration on 30 May 1986 and 5 and 26 June 1987 but they were dismissed on 12 June 1986 and 9 July 1987 for reasons of prevention and of preservation of evidence (*per fini preventivi e cautelari*).

11. On 25 July 1987 the applicant sought an early hearing, pointing to the damage caused him by his being unable to enjoy the benefit of his property. The trial was initially set down for 17 November 1987 but was postponed to 15 December 1987.

In a judgment delivered the same day, which was filed in the registry on 30 December 1987 and notified on 1 December 1988, the magistrate imposed on Mr Vendittelli, who was present when the judgment was delivered, a suspended sentence of twenty days' imprisonment and a fine of ten million lire, without any entry in the criminal records, for having carried out works in his flat without a permit from the mayor (*concessione edilizia*).

12. The applicant appealed against this decision within three days of its delivery and filed his pleadings on 10 December 1988; the twenty-day period allowed for filing grounds of appeal began to run on the day of service of the judgment. The hearing in the Rome Court of Appeal began on 2 May 1989. It was adjourned on 8 January and 27 March 1990 - on the first occasion at the request of Mr Vendittelli, whose doctor had ordered him to rest for five days, and on the second occasion because his counsel was unable to attend. In the meantime, on 13 January 1990, the lawyer had already applied for the trial to be resumed.

13. In a judgment of 4 July 1990, which was filed in the registry on the same day and became final and therefore enforceable on 30 October 1990, the Court of Appeal held that the offence had been amnestied and the prosecution barred as a result of a presidential decree that had been issued on 12 April 1990. It did not, however, order that the property should be released from sequestration, nor was the judgment notified to the applicant, who had to obtain a copy from the registry on 5 December 1990. In the meantime, by a letter of 19 July 1990, Mr Vendittelli had applied for a hearing to be fixed.

14. On 19 November 1990 the file was sent to the magistrate for placing in the archives. In a letter of 10 December 1990 to the President of the Rome Court of Appeal, which was sent on 17 December to the magistrate's court (*pretura*), the applicant again sought to have his property released from sequestration. He complained of the bad state of his flat.

15. On 17 December the registrar of the magistrate's court sent the file to the magistrate for execution of the judgment, that is to say release from sequestration. On 31 January 1991 the magistrate held that he had no jurisdiction and ordered that the file should be returned to the Court of Appeal.

16. It arrived the next day. The central registry of the Court of Appeal recorded the point raised regarding execution (*incidente di esecuzione*) and on 11 February 1991 sent the file to the registry of the Second Criminal Division. On 10 April and 9 May 1991 Mr Vendittelli again sought to have his property released from sequestration.

17. In an order of 17 May 1991, which was filed on 21 May, sent to Rome Town Hall on 23 May "for execution of what was ordered in it" and served on the applicant on 3 June, the Rome Court of Appeal allowed Mr Vendittelli's application and also noted that the mayor had issued a permit in the meantime.

PROCEEDINGS BEFORE THE COMMISSION

18. Mr Vendittelli applied to the Commission on 11 January 1989. He complained of the length of the criminal proceedings against him (Article 6 para. 1 of the Convention) (art. 6-1) and of an infringement of his right to the peaceful enjoyment of his possessions arising from the length of the proceedings and from the continued sequestration of his flat after the Rome Court of Appeal's judgment of 4 July 1990 (Article 1 of Protocol No. 1) (P1-1).

19. The Commission declared the application (no. 14804/89) admissible on 14 October 1992. In its report of 31 March 1993 (made under Article 31) (art. 31), it expressed the unanimous opinion that

(a) there had been a breach of Article 6 para. 1 (art. 6-1) of the Convention by reason of the excessive length of the proceedings;

(b) it was unnecessary to state its opinion on the complaint under Article 1 of Protocol No. 1 (P1-1) relating to the length of the criminal proceedings; and

(c) there had been a breach of Article 1 of Protocol No. 1 (P1-1) on account of the failure to remove the seals after the judgment of the Court of Appeal.

The full text of the Commission's opinion 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 293-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

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

20. The applicant submitted that the length of the criminal proceedings against him had been contrary to Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The Government rejected this complaint but the Commission accepted it.

21. The period to be taken into consideration began on 20 May 1986 with the decision by the Rome magistrate, who upheld the placing of seals on Mr Vendittelli's flat (see paragraph 10 above). It ended on 30 October 1990, when the Rome Court of Appeal's decision became final (see paragraph 13 above and, as the most recent authority and *mutatis mutandis*, the Raimondo v. Italy judgment of 22 February 1994, Series A no. 281-A, p. 20, para. 42). It therefore covers four years, five months and ten days.

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 stated that the length of the proceedings in the two courts concerned could not be regarded as excessive. They blamed the applicant for having at first instance sought to have his property released from sequestration rather than to have his case dealt with more quickly (see paragraph 10 above) and for having on appeal twice sought adjournments (see paragraph 12 above).

24. In Mr Vendittelli's submission, there had been legitimate reasons for adjourning the hearings on appeal (see paragraph 12 above) and the proceedings had been delayed for only a few days. The judicial authorities had waited eleven months and fifteen days before notifying the decision of the magistrate's court (see paragraph 11 above) and did not serve the Court of Appeal's decision of 4 July 1990 at all (see paragraph 13 above).

25. The Court reiterates that only delays attributable to the State may justify a finding that a "reasonable time" has been exceeded (see, among other authorities, the Monnet v. France judgment of 27 October 1993, Series A no. 273-A, p. 12, para. 30).

26. Like the Commission, it notes, firstly, that the case was not particularly complex.

27. It considers, furthermore, that Mr Vendittelli bears some responsibility for the prolongation of the proceedings in the Court of Appeal

as, although legitimate, the two adjournments he sought (see paragraph 12 above) caused a delay of about six months, which, in proceedings lasting fourteen months in all, was a fairly substantial one; moreover, they enabled the applicant to take advantage of the amnesty.

28. As to the conduct of the authorities, the Court notes that it took eleven months and fifteen days for the magistrate's court to notify its decision of 15 December 1987. Nevertheless, seeing that Mr Vendittelli had been present when it was delivered, he could reasonably have been expected to obtain a copy of the judgment himself it was sent to the registry on 30 December 1987 (see paragraph 11 above) and draw up his grounds of appeal from that moment.

The Court of Appeal's judgment which was filed on the same day that it was delivered (see paragraph 13 above) and not five months later, as the Commission indicated was admittedly never served. However, that failure had no effect on the length of the proceedings since the matter was one of taking formal note of an amnesty.

29. Having regard to all the circumstances of the case, to the applicant's conduct, to the fact that two courts dealt with the case, and to the outcome, the Court does not consider the overall length of the trial to have been excessive. There has accordingly been no breach of Article 6 para. 1 (art. 6-1).

II. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL NO. 1 (P1-1)

30. Mr Vendittelli also maintained that the length of the criminal proceedings against him and the continued sequestration of his flat (see paragraph 13 above) had infringed Article 1 of Protocol No. 1 (P1-1), which provides:

"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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Article 1 of Protocol No. 1 (P1-1) taken together with Article 6 para. 1 of the Convention (art. 6-1)

31. The applicant argued that the length of the proceedings deprived him of the enjoyment of his property.

32. The Government did not express a view.

33. The Commission considered that it was unnecessary to rule on the issue.

34. The Court points out that one and the same fact may fall foul of more than one provision of the Convention and Protocols (see, as the most recent authority, the *Wiesinger v. Austria* judgment of 30 October 1991, Series A no. 213, p. 27, para. 77).

In the instant case the sequestration of the flat was a measure ancillary to the criminal proceedings. That being so, given the conclusion in paragraph 29 above, no breach has been made out in this respect.

B. Article 1 of Protocol No. 1 (P1-1) taken alone

35. The applicant also complained that the Rome Court of Appeal had waited for about eleven months after the judgment of 4 July 1990 that ended the criminal proceedings before ordering the release of his property from sequestration (see paragraphs 13 and 17 above). During that period he had not been able to enjoy the use of his flat or dispose of it as he wished.

36. The Government put forward several reasons for this lapse of time. Firstly, the registries of the courts concerned had to carry out various formalities (see paragraphs 14-16 above). Then it had to be verified that Mr Vendittelli was the owner of the sequestered flat. Lastly, the period to be taken into consideration when the alleged delay in returning the property was being assessed began on 7 November 1990, the date on which the applicant obtained the building permit making the works that had been carried out lawful.

37. The Delegate of the Commission submitted that the starting-point should be taken to be 4 July 1990 (see paragraph 13 above). In the case of a judgment implementing an amnesty, it was unnecessary to wait for it to become final since it was unlikely that an appeal would be lodged with a view to having the sequestration continued.

38. Like the Commission, the Court finds that the impugned measure was provided for by law and was designed not to deprive the applicant of his property but only to prevent him from using it. Consequently, the second paragraph of Article 1 of Protocol No. 1 (P1-1) applies in this instance.

The sequestration, which was part of the criminal proceedings, had two objectives: to preserve the evidence of the offence and to prevent any aggravation of the offence. The measure therefore had a legitimate aim.

39. In accordance with its case-law (see the *Raimondo v. Italy* judgment previously cited, p. 20, para. 42), the Court considers that the time allowed for the prosecution to appeal on points of law must be taken into account. It will therefore examine the applicant's complaint in respect of the period running from 30 October 1990 to 21 May 1991, when the Court of Appeal's

order that the property should be released from sequestration was filed in the registry (see paragraph 17 above).

The date of 7 November 1990 indicated by the Government as being the day on which Mr Vendittelli received the building permit does not appear either in the case file or in the documents supplied by the Government themselves. Furthermore, the formalities relied on do not explain why release of the property from sequestration was not ordered at least as soon as the Court of Appeal's judgment of 4 July 1990 became final. Admittedly, the applicant sent his letter of 10 December 1990 (see paragraph 14 above) to the wrong judicial authority, but he thereby helped to set in motion the proceedings relating to the execution of the judgment (see paragraphs 14 and 15 above).

40. The Court concludes that the Court of Appeal ought to have ordered the immediate release of the property from sequestration without even waiting for Mr Vendittelli to raise the issue, as the considerations justifying sequestration until 30 October 1990 (see paragraph 38 above) had ceased to exist thereafter. Continuing the sequestration after that date until 21 May 1991 (see paragraph 39 above) therefore placed a disproportionate burden on the applicant. There has accordingly been a breach of Article 1 of Protocol No. 1 (P1-1) in this respect.

III. APPLICATION OF ARTICLE 50 (art. 50)

41. Under Article 50 (art. 50) of the Convention,

"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."

42. At the hearing, counsel for Mr Vendittelli submitted several documents containing his client's claims for the damage sustained. He also sought reimbursement of costs and expenses.

43. The Court notes that Rule 50 of its Rules of Court lays down that claims must be filed at least one month before the opening of the oral proceedings.

Even if allowance is made for the difficulty of assembling all the necessary vouchers, it considers that the time allowed in this case for making these claims was sufficient.

44. That being so, the claims must be dismissed as being out of time.

FOR THESE REASONS, THE COURT

1. Holds by five votes to four that there has been no breach of Article 6 para. 1 (art. 6-1) of the Convention;
2. Holds by five votes to four that there has been no breach of Article 1 of Protocol No. 1 (P1-1) taken together with Article 6 para. 1 (art. 6-1);
3. Holds unanimously that there has been a breach of Article 1 of Protocol No. 1 (P1-1) in that the sequestration of the applicant's flat was continued beyond 30 October 1990;
4. Dismisses unanimously the claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 18 July 1994.

Rolv RYSSDAL
President

Herbert PETZOLD
Acting Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the joint dissenting opinion of Mr Walsh, Mr Spielmann, Mrs Palm and Mr Loizou is annexed to this judgment.

R.R.
H.P.

JOINT DISSENTING OPINION OF JUDGES WALSH,
SPIELMANN, PALM AND LOIZOU

1. We regret that we cannot join with the majority of the Court in their judgment on the questions of whether there were breaches of Article 6 para. 1 (art. 6-1) of the Convention and of Article 1 of Protocol No. 1 combined with Article 6 para. 1 (P1-1, art. 6-1).

2. The stark fact is that the proceedings against the applicant in what, by any standards, was a simple case of whether or not there had been breach of the planning laws covered a period of four and a half years. Even allowing for the delay of about six months attributable to the applicant, we are of opinion that the time taken was inexcusable in the circumstances of the case, the most important of which was that during the period in question the applicant was locked out of his home by the public authorities, a situation which should have added some sense of urgency to the prosecuting and judicial authorities. We are satisfied that there has been a breach of Article 6 para. 1 (art. 6-1).

3. We agree with the majority of the Court that there has been a breach of Article 1 of Protocol No. 1 (P1-1) for the reasons stated by the Court.

4. In our opinion that breach of Article 1 of Protocol No. 1 (P1-1) is the direct result of and inextricably linked with the breach of Article 6 para. 1 (art. 6-1) and therefore there has also been a breach of Article 1 of Protocol No. 1 combined with Article 6 para. 1 (P1-1, art. 6-1).