



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

COURT (CHAMBER)

CASE OF CETERONI v. ITALY

(Application no. 22461/93 ; 22465/93)

JUDGMENT

STRASBOURG

15 November 1996

In the case of Ceteroni v. Italy¹,

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 Rules of Court B² (2), as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr C. RUSSO,

Mr S.K. MARTENS,

Mrs E. PALM,

Mr A.N. LOIZOU,

Mr A.B. BAKA,

Mr G. MIFSUD BONNICI,

Mr J. MAKARCZYK,

Mr K. JUNGWIERT,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 28 June and 21 October 1996,

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

PROCEDURE

1. The case was referred to the Court by three Italian nationals, Mr Umberto and Mr Gaetano Ceteroni and Mrs Anna Maria Ceteroni, née Magri ("the applicants") on 15 June 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in two applications (nos. 22461/93 and 22465/93) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by the three Ceteronis on 2 December 1992. The applicants' application to the Court referred to Article 48 of the Convention (art. 48) as amended by Protocol No. 9 (P9), which has been ratified by Italy. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6 para. 1 and

¹ The case is numbered 55/1995/561/646-647. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The third number indicates the case's position on the list of cases referred to the Court since its creation and the last two numbers indicate its position on the list of the corresponding originating applications to the Commission.

² Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning the States bound by Protocol No. 9 (P9).

8 of the Convention (art. 6-1, art. 8) and Article 2 para. 1 of Protocol No. 4 (P4-2-1).

2. On 27 September 1995 the Court's Screening Panel decided not to decline consideration of the case and to submit it to the Court (Article 48 para. 2 of the Convention) (art. 48-2).

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. 4 (b) of Rules of Court B). On 29 September 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr S.K. Martens, Mrs E. Palm, Mr A.N. Loizou, Mr A.B. Baka, Mr G. Mifsud Bonnici, Mr J. Makarczyk and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Italian Government ("the Government"), the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the order made in consequence, the Registrar received the applicants' memorial on 2 April 1996 and the Government's memorial on 8 May 1996.

5. On 14 May 1996 the President gave the applicants' lawyer leave to use the Italian language in the proceedings before the Court (Rule 28 para. 3).

6. On 31 May 1996 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 President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 27 June 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr G. RAIMONDI, magistrato, on secondment to the Diplomatic Legal Service, Ministry of Foreign Affairs, *co-Agent,*

Mr V. NAPOLEONI, magistrato, on secondment to the Ministry of Justice, *Counsel;*

(b) for the Commission

Mr B. CONFORTI, *Delegate;*

(c) for the applicants

Mr R. VICO, avvocato, *Counsel,*

Mr F. UGGETTI, avvocato,

Ms C. GARDINI, *Advisers.*

The Court heard addresses by Mr Conforti, Mr Vico, Mr Uggetti and Mr Raimondi.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

8. On 2 April 1982 the District Court of Fermo (Ascoli Piceno) made an insolvency order in respect of the company set up by Mr Umberto Ceteroni and his parents and also declared them personally bankrupt.

9. On 8 and 15 June 1983 respectively Mr A. and the L.M. company, claiming to be creditors of the bankrupts, instituted separate proceedings before the Fermo bankruptcy judge (giudice delegato) contesting the statement of liabilities drawn up with a view to settling the company's debts. The judge set down hearings to enter appearances on 26 October and 9 November 1983 respectively. On the latter date the liquidator applied to the judge for leave to join the second proceedings. His application was allowed on 3 February 1987.

10. The preparatory phases of the two cases continued until 15 and 29 October 1990. During the intervening period fifteen hearings were held in one case and sixteen in the other; they were almost all adjourned at the request of the parties or by the judge of his own motion.

11. On a date that has not been specified the two sets of proceedings were stayed sine die because the judge had been transferred to another post. Proceedings were reopened on 25 March and 7 February 1994.

12. On 30 May 1994 the Fermo District Court struck the first case out of its list because the parties had failed to appear. According to information supplied by the applicants' lawyer, the plaintiff had decided not to pursue his case. As regards the second case, on 21 February 1994 the parties communicated their final submissions and the judge set down the trial hearing for 11 March 1994, on which date the Fermo District Court allowed the L.M. company's application. The text of the judgment was deposited at the registry on 7 April 1994. II. Relevant domestic law

13. The relevant provisions of Royal Decree no. 267 of 16 March 1942 read as follows:

Section 26 "An appeal shall lie against the decisions of the bankruptcy judge ... to the district court within three days of their adoption, and may be lodged by the liquidator, by the bankrupt, by the creditors' committee or by any other person with an interest. The district court shall deliberate in private session and give a reasoned decision. The appeal shall not have suspensive effect in relation to the impugned decision."

Section 36 "An appeal shall lie against measures taken by the liquidator. Such appeals may be lodged by the bankrupt, or any other person with an interest, with the bankruptcy judge, who shall give a reasoned decision. An appeal against that decision must be lodged within three days with the district court. That court shall give a reasoned decision after hearing the liquidator and the appellant."

Section 48 "Correspondence addressed to the bankrupt must be passed to the liquidator, who shall be empowered to retain correspondence concerning property interests. The liquidator has a duty of confidentiality as regards the content of the correspondence that does not relate to such interests."

Section 49 "The bankrupt may not leave his place of residence without the authorisation of the bankruptcy judge and must report to that judge, to the liquidator and to the creditors' committee each time that he is duly summoned, except where he is unable to appear on legitimate grounds and the judge gives him leave to send a representative. If the bankrupt fails to comply with a summons, the judge may order that he be brought by the police."

PROCEEDINGS BEFORE THE COMMISSION

14. The applicants applied to the Commission on 2 December 1992. They relied on Articles 6 para. 1 and 8 of the Convention (art. 6-1, art. 8) and Article 2 para. 1 of Protocol No. 4 (P4-2-1), complaining of the length of two sets of civil proceedings, an interference with their right to respect for their correspondence and with their right to liberty of movement within the territory of their State and freedom to choose their place of residence there.

15. The Commission declared the applications (nos. 22461/93 and 22465/93) admissible on 17 October 1994. In its report of 22 February 1995 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art. 6-1), and that it was not necessary to determine whether there had been breaches of Article 8 of the Convention (art. 8) or of Article 2 para. 1 of Protocol No. 4 (P4-2-1). The full text of the Commission's opinion is reproduced as an annex to this judgment³.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

16. At the hearing the Government requested the Court, by way of primary submission, to find the application inadmissible for failure to exhaust domestic remedies and, in the alternative, to hold that there had been no violation of the Convention or of Protocol No. 4 (P4).

³ For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-V), 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 OF THE CONVENTION (art. 6-1)

17. The applicants complained of the length of two sets of civil proceedings and relied on Article 6 para. 1 of the Convention (art. 6-1), 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. The Government's preliminary objection

18. The Government raised an objection to the admissibility of the applicants' complaint on the ground that they had failed to exhaust the domestic remedies. Their objection was formulated in two limbs. In the first limb the Government maintained that under section 36 of Royal Decree no. 267 of 16 March 1942 ("the royal decree") there existed a possibility, even for the bankrupt, to complain to the bankruptcy judge, not only in respect of the measures taken by the liquidator but also on account of the latter's inactivity. The applicants could therefore have asked the bankruptcy judge to take a more active part in the two sets of proceedings and to do his utmost to accelerate them. Under the second limb the Government contended that the applicants could also have demanded - by virtue of the same provision - that the bankruptcy judge terminate the bankruptcy proceedings without waiting for the outcome of the two sets of proceedings contesting the statement of liabilities. In that event the judge could have, and would have had to, set aside, when determining the final distribution of the assets deriving from the sale of goods, a specified sum intended to meet, if necessary, the debts claimed by the plaintiff creditors. These remedies were, the Government argued, available, effective and extremely rapid, as the bankruptcy judge could decide the matter in a few weeks by a simple reasoned decision and an appeal lay against his decisions to the district court.

19. As to the first limb of the objection, the Court notes that under the arrangements set up by the royal decree, the bankruptcy judge, who exercises general supervision over the bankruptcy and the activities of the liquidator, is at the same time responsible for preparing proceedings brought by creditors opposing the liquidator's decisions for trial. It is in exercising that function that he authorises the liquidator to join proceedings concerning objections to the statement of liabilities and he should intervene, even of his own motion, where the liquidator acts too slowly. In addition, although the case-law cited by the Government at the hearing shows that in some cases the bankruptcy judge can have the liquidator replaced or require him to submit his report on the management of the bankrupt's assets, there is considerable divergence of opinion in legal writing on this point. The Court

observes that, while it is not its task to resolve this question, which is a matter for the Italian legislature, the remedy invoked by the Government cannot be regarded as effective. In these circumstances the applicants were under no obligation to avail themselves of it. The objection is therefore unfounded in this respect. The second limb was not put forward before the Commission and the Government are therefore estopped from relying on it.

B. Merits of the complaint

20. It remains to determine whether a reasonable time was exceeded. The Commission and the applicants considered that it had been, whereas the Government did not.

21. The Court observes that the periods to be taken into consideration began on 8 and 15 June 1983 when applications were lodged with the Fermo bankruptcy judge by Mr A. and the L.M. company. They ended on 30 May and 7 April 1994, respectively when the first proceedings were struck out of the list and when the Fermo District Court's judgment was deposited with the registry in the second set of proceedings (see paragraphs 8 and 12 above), a total of almost eleven years in the first proceedings and ten years and ten months in the second.

22. The reasonableness of the length of proceedings must be assessed in the light of the 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, the applicant's conduct and that of the relevant authorities (see, among many other authorities, *mutatis mutandis*, the *Ausiello v. Italy* judgment of 21 May 1996, Reports of Judgments and Decisions 1996-III, p. 722, para. 19).

23. The Government pointed to the applicants' conduct. They had never applied to the bankruptcy judge to challenge the liquidator's alleged inactivity. In addition the delay of which they complained had been the result of the numerous requests for adjournments made by the parties to the proceedings.

24. Like the applicants and the Commission, the Court notes in the first place that the liquidator was authorised to join the proceedings brought by the L.M. company on 3 February 1987, more than three years after his application to that effect was lodged with the judge responsible for preparing the case (see paragraph 9 above). In addition the transfer of the latter, who also exercised the functions of bankruptcy judge, entailed a stay of more than three years in the preparation for trial of both cases (see paragraph 11 above). Consequently, the Court takes the view that any attempt by the applicants to expedite the proceedings would have been bound to fail. The judge had, moreover, never refused the applications for adjournment made by the liquidator and the plaintiffs (Mr A. and the L.M. company). A "reasonable time" was accordingly exceeded and there has therefore been a violation of Article 6 para. 1 of the Convention (art. 6-1).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 2 OF PROTOCOL NO. 4 (art. 8, P4-2)

25. The applicants complained that the unjustified prolonging of the bankruptcy proceedings had interfered with their right to respect for their correspondence (Article 8 of the Convention) (art. 8) and their right to liberty of movement within their State (Article 2 of Protocol No. 4) (P4-2).

26. The Government contested this submission. They considered that these complaints could not raise any separate issue from that of the length of the proceedings as they were the direct or indirect consequence of that state of affairs.

27. Having regard to the circumstances of the case and the finding in paragraph 24 above, the Court, like the Commission, does not consider it necessary also to determine these complaints (see, among other authorities, *mutatis mutandis*, the Santilli v. Italy judgment of 19 February 1991, Series A no. 194-D, p. 62, para. 22).

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION (art. 50)

28. According to Article 50 of the Convention (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

29. Citing the prejudice to their clients deriving from the proceedings brought to contest the statement of liabilities and the delay in terminating the bankruptcy proceedings, the applicants' lawyers claimed 1,000,000,000 Italian lire (ITL) for Mr Umberto Ceteroni and ITL 500,000,000 each for Mr Gaetano Ceteroni and Mrs Anna Maria Ceteroni. They referred to the difficulties encountered by the applicants, particularly the first applicant, who had been 30 years old at the time of the bankruptcy declaration and who had not been able to secure rapidly the discharge necessary for him to pursue freely his professional activities.

30. The Government took the view that in the light of the applicants' conduct during the proceedings whose length they complained of and in the absence of any evidence to substantiate the claim of pecuniary damage, a finding of a violation of Article 6 (art. 6), if the Court were to reach that conclusion, would constitute sufficient just satisfaction in respect of non-

pecuniary damage. The Delegate of the Commission left this matter to the discretion of the Court.

31. The Court finds that the applicants have not established any pecuniary damage. However, they undoubtedly suffered non-pecuniary damage for which the mere finding of a violation does not constitute sufficient reparation. The Court accordingly awards Mr Umberto Ceteroni ITL 50,000,000 and Mr Gaetano Ceteroni and Mrs Anna Maria Ceteroni ITL 25,000,000 each.

B. Costs and expenses

32. The applicants sought the reimbursement of the costs and expenses incurred before the Convention institutions. They estimated this amount at ITL 89,640,100, plus 2% for the lawyers' insurance fund and 19% for value-added tax.

33. The Government and the Delegate of the Commission left this matter to be determined by the Court, which, having regard to the evidence available to it and to its case-law in this field, awards the applicants together ITL 20,000,000 under this head.

C. Default interest

34. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 10% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objection;
2. Holds that there has been a violation of Article 6 para. 1 of the Convention (art. 6-1);
3. Holds that it is not necessary to consider whether there has been a violation of Article 8 of the Convention or of Article 2 of Protocol No. 4 (art. 8, P4-2);
4. Holds that the respondent State is to pay, within three months, 50,000,000 (fifty million) Italian lire to Mr Umberto Ceteroni and 25,000,000 (twenty-five million) lire each to Mr Gaetano Ceteroni and Mrs Anna Maria Ceteroni for non-pecuniary damage and, to the three applicants together, 20,000,000 (twenty million) lire for costs and expenses, simple

interest at an annual rate of 10% being payable on these amounts from the expiry of the above-mentioned three months until settlement;

5. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 15 November 1996.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar