



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

AFFAIRE FISANOTTI c. ITALIE

CASE OF FISANOTTI v. ITALY

(99/1997/883/1095)

ARRÊT/JUDGMENT

STRASBOURG

23 avril/April 1998

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SUMMARY¹

Judgment delivered by a Chamber

Italy – length of proceedings before the Court of Audit

I. ARTICLE 6 § 1 OF THE CONVENTION (“reasonable time”)

A. Period to be taken into consideration

Starting-point: application to Sardinia Regional Division of Court of Audit.

End: proceedings still pending.

Total: approximately five years and eight months.

B. Applicable criteria

Reference to Court’s case-law.

Consideration of certain stages of the proceedings.

Conclusion: violation (unanimously).

II. ARTICLE 50 OF THE CONVENTION

1. Pecuniary damage: not proved – claim dismissed.

2. Non-pecuniary damage: compensation awarded.

3. Costs and expenses: claim allowed.

Conclusion: respondent State to pay applicant specified sums (unanimously).

COURT’S CASE-LAW REFERRED TO

15.11.1996, Ceteroni v. Italy

1. This summary by the registry does not bind the Court.

In the case of Fisanotti v. Italy¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court B², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr C. RUSSO,

Mr N. VALTICOS,

Mr I. FOIGHEL,

Mr R. PEKKANEN,

Sir John FREELAND,

Mr L. WILDHABER,

Mr J. MAKARCZYK,

Mr U. LÖHMUS,

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

Having deliberated in private on 2 February and 25 March 1998,

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

PROCEDURE

1. The case was referred to the Court by the Italian Government (“the Government”) on 9 October 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 32305/96) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) under Article 25 by an Italian national, Mr Gian Carlo Fisanotti (“the applicant”), on 28 April 1994.

The Government’s application referred to Articles 44 and 48 and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46). 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 Article 6 § 1 of the Convention.

Notes by the Registrar

1. The case is numbered 99/1997/883/1095. 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.

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

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant stated that he did not wish to take part in the proceedings.

3. On 25 October 1997 the President of the Court, Mr R. Ryssdal, decided that, in the interests of the proper administration of justice, this case should be considered by the Chamber already constituted on 27 August 1997 to consider the case of *S.R. v. Italy*¹ (Rule 21 § 7). That Chamber included *ex officio* Mr C. Russo, the elected judge of Italian nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)); the other seven members, drawn by lot, were Mr R. Macdonald, Mr N. Valticos, Mr I. Foighel, Mr R. Pekkanen, Mr L. Wildhaber, Mr J. Makarczyk and Mr U. Löhmus (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the orders made in consequence, the Registrar received the applicant's claims for just satisfaction on 9 December 1997 and the Government's memorial on 19 December 1997. On 26 January 1998 the Secretary to the Commission indicated that the Delegate did not wish to submit observations in writing.

5. On 12 December 1997 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the instructions of the President of the Chamber.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 29 January 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr. V. ESPOSITO, Divisional President at the Court of Cassation,
on secondment to the Diplomatic Legal Service,
Ministry of Foreign Affairs, *co-Agent*;

(b) *for the Commission*

Mr J.-C. SOYER, *Delegate*.

The Court heard addresses by Mr Soyer and Mr Esposito.

1. Case no. 78/1997/862/1073.

7. As Mr Macdonald was unable to take part in the deliberations on 25 March 1998, he was replaced by Sir John Freeland, substitute judge (Rules 22 § 1 and 24 § 1).

AS TO THE FACTS

8. Mr Gian Carlo Fisanotti was born in 1935 and lives in Cagliari. He was a civil servant until he took early retirement on 31 July 1989.

9. On 13 July 1992 the applicant applied to the Sardinia Regional Division of the Court of Audit (“the Regional Division”) for an enhanced pension. He claimed that his illness had been caused by his work.

10. On 11 November 1992 the file was forwarded to Principal State Counsel for preparation of the case. Following the entry into force of Legislative Decree no. 232 of 17 July 1993, which abolished the role of State Counsel in pensions litigation, the file was sent back to the Regional Division on 28 July 1993.

11. The first hearing was held on 28 January 1995. By an order of the same date, which was deposited with the registry on 4 March 1996, the Regional Division requested the opinion of the Medical Board of Cagliari Military Hospital. On 3 June 1997 the applicant was examined by the Board.

12. On 6 October 1997 the President of the Regional Division set down a hearing for 11 February 1998.

PROCEEDINGS BEFORE THE COMMISSION

13. The applicant applied to the Commission on 28 April 1994. Relying on Article 6 § 1 of the Convention, he complained of the length of the proceedings in the Court of Audit.

14. On 15 April 1997 the Commission (First Chamber) declared the application (no. 32305/96) admissible. In its report of 9 July 1997 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1. The full text of the Commission’s opinion is reproduced as an annex to this judgment¹.

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission’s report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

15. The Government asked the Court to hold that there had been no violation of Article 6 § 1 of the Convention.

16. The applicant called upon the Court to find a violation of that provision and to award him just satisfaction.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. Mr Fisanotti complained of the length of the proceedings he had instituted in the Court of Audit. He relied on Article 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...”

18. The Court notes that the relevant period began on 13 July 1992 when the applicant applied to the Sardinia Regional Division of the Court of Audit (“the Regional Division”) and has not yet ended (see paragraphs 9 and 12 above). The proceedings have therefore already lasted approximately five years and eight months.

19. 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 Ceteroni v. Italy judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1756, § 22).

20. According to the Government, the Commission found a violation of Article 6 of the Convention on the basis solely of the length of the proceedings in issue, without taking into consideration their memorial of 19 November 1996. In the latter document they had argued that the length of the proceedings was justified because of the complexity of the case – it had been necessary to obtain the opinion of the Medical Board –, and because the proceedings had been pending at the entry into force of the reform designed to speed up the examination of cases in the Court of Audit by improving the organisation of “judicial offices”, by simplifying the procedural rules and by abolishing the role of State Counsel in such

proceedings. The latter measure had in the present case led to the sending back of the case file from State Counsel's office to the Sardinia Regional Division.

The reform entailed the transfer of a large number of files and there was initially some delay in setting up a judicial division in each region pending the enactment by Parliament of a law to implement the emergency decrees issued by the Government, which took one year.

The length of the proceedings in the instant case should be assessed in the light of the efforts undertaken by the State to fulfil its obligation as to the result.

21. The Commission drew attention to several delays for which the respondent State was responsible and expressed the view that the length of the proceedings in question was excessive.

22. The Court takes note of the efforts of the Italian authorities in connection with legislation on the jurisdiction and organisation of the Court of Audit. However, the introduction of a reform of this nature cannot justify delays since States are under a duty to organise the entry into force and implementation of such measures in a way that avoids prolonging the examination of pending cases. In the present case it discerns no delay linked to the reform. On the other hand, there were several inexplicable periods of inactivity which count against the authorities: over two years and six months elapsed between the lodging of the application with the Regional Division and the first hearing (see paragraphs 9 and 11 above) and more than two years and seven months between that hearing and the date set down by the President of the Division for a new hearing (see paragraph 12 above).

23. As to the applicant, no criticism can be levelled at his conduct.

24. The Court notes in addition that the case was not particularly complex.

25. In conclusion, it does not regard the length of the proceedings in issue as reasonable. There has accordingly been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

26. According to Article 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 and costs and expenses

27. The applicant claimed 30,000,000 Italian lire (ITL) for the damage that he had allegedly sustained and ITL 2,500,000 for the costs and expenses he had incurred on account of the length of the proceedings.

28. The Government pointed out that the applicant had not submitted claims for compensation for pecuniary damage and considered that the finding of a violation of Article 6 would constitute sufficient just satisfaction for any non-pecuniary damage. They left the matter of the costs and expenses relating to the present proceedings to the discretion of the Court.

29. The Delegate of the Commission proposed that the applicant be awarded just satisfaction of just under ITL 10,000,000, but did not express a view on costs and expenses.

30. The Court is of the opinion that the applicant has failed to show any pecuniary damage deriving from the delays of which he complained. It finds, on the other hand, that he sustained non-pecuniary damage and incurred costs and expenses, and awards him ITL 12,500,000 under the first of these heads and ITL 2,500,000 under the second.

B. Default interest

31. 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 5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, 12,500,000 (twelve million five hundred thousand) Italian lire in respect of non-pecuniary damage and 2,500,000 (two million five hundred thousand) lire in respect of costs and expenses;
 - (b) that simple interest at an annual rate of 5% shall be payable on those sums from the expiry of the above-mentioned three months until settlement;
3. *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 23 April 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar