



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

DE SANTA, LAPALORCIA, ABENAVOLI, NICODEMO CASES

CASE OF LAPALORCIA v. ITALY

(29/1996/648/833)

JUDGMENT

STRASBOURG

2 September 1997

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SUMMARY¹

Judgments delivered by a Chamber

Italy – length of proceedings in administrative courts

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

A. Applicability

Applicants asserted either a purely economic right (De Santa, Lapalorcia and Abenavoli) or an essentially economic right (Nicodemo); administrative authorities’ discretionary powers not in issue – cases’ private-law features predominated over public-law features.

Conclusion: Article 6 § 1 applicable (seven votes to two: De Santa, Lapalorcia and Abenavoli; six votes to three: Nicodemo).

B. Compliance

1. Periods to be taken into consideration

Starting-point (in each case): institution of proceedings in Regional Administrative Court (“the RAC”).

End: date of deposit with registry of *Consiglio di Stato*’s judgment (De Santa); date on which RAC’s judgment became final (Lapalorcia); proceedings still pending (Abenavoli and Nicodemo).

Total: from approximately six years and two months (Lapalorcia) to nearly seventeen years (De Santa).

2. Applicable criteria

Reference to Court’s case-law.

Certain stages of proceedings considered in each case.

Conclusion: violation (seven votes to two: De Santa, Lapalorcia and Abenavoli; six votes to three: Nicodemo).

II. ARTICLE 50 OF THE CONVENTION

A. Damage

1. Pecuniary damage: not claimed (De Santa); claim dismissed, for lack of causal connection with violation found (Abenavoli and Nicodemo).

2. Non-pecuniary damage: claim allowed in part (De Santa, Abenavoli and Nicodemo).

3. Pecuniary and non-pecuniary damage: claim allowed in part (Lapalorcia).

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

B. Costs and expenses

Before Court: claim allowed in part (De Santa) – before Convention institutions: claim allowed in part (Lapalorcia and Abenavoli) – not claimed (Nicodemo).

Conclusion: respondent State to pay applicants specified sums (unanimously: De Santa, Lapalorcia and Abenavoli; eight votes to one: Nicodemo).

COURT'S CASE-LAW REFERRED TO (IN ONE OR MORE JUDGMENTS)

26.11.1992, Francesco Lombardo v. Italy; 24.8.1993, Massa v. Italy; 28.9.1995, Scollo v. Italy; 21.2.1996, Hussain v. the United Kingdom; 15.11.1996, Ceteroni v. Italy

In the case of Lapalorcia v. Italy²,

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 B³, as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr C. RUSSO,

Mr N. VALTICOS,

Mr R. PEKKANEN,

Mr A.B. BAKA,

Mr M.A. LOPES ROCHA,

Mr G. MIFSUD BONNICI,

Mr P. KÜRIS,

Mr E. LEVITS,

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

Having deliberated in private on 2 December 1996, 22 February and 28 June 1997,

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 11 March 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 25586/94) against the Italian Republic lodged with the Commission under Article 25 by an Italian national, Mrs Maria Rosaria Lapalorcia, on 12 May 1994.

The Commission’s request 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 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 § 1 of the Convention.

Notes by the Registrar

2. The case is numbered 29/1996/648/833. 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.

3. 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 she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 31). The lawyer was given leave by the President of the Chamber to use the Italian language (Rule 28 § 3).

3. On 30 March 1996 the President of the Court, Mr R. Ryssdal, decided, under Rule 21 § 7 and in the interests of the proper administration of justice, that a single Chamber should be constituted to consider the instant case and the cases of Spurio, De Santa, Gallo, Abenavoli, Zilaghe, Laghi, Viero, Orlandini, Ryllo, Soldani, Fusco, Di Luca and Saluzzi, Nicodemo, Pizzi, Scarfò, Argento and Trombetta v. Italy⁴. The Chamber to be constituted for that purpose 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)). On the same day, in the presence of the Registrar, the President of the Court drew by lot the names of the other seven members, namely Mr N. Valticos, Mr R. Pekkanen, Mr A.B. Baka, Mr M.A. Lopes Rocha, Mr G. Mifsud Bonnici, Mr P. Kūris and Mr E. Levits (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 Italian Government (“the Government”), the applicant’s lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence, the Registrar received the applicant’s memorial on 17 July 1996 and the Government’s memorial on 25 July. On 25 June 1996 the Secretary to the Commission had informed the Registrar that the Delegate would submit his observations at the hearing.

5. On 21 October 1996 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 President’s decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 27 November 1996. The Court had held a preparatory meeting beforehand.

4. 26/1996/645/830; 27/1996/646/831; 28/1996/647/832; 30/1996/649/834; 31/1996/650/835; 32/1996/651/836; 33/1996/652/837; 34/1996/653/838; 35/1996/654/839; 36/1996/655/840; 37/1996/656/841; 38/1996/657/842-843; 39/1996/658/844; 40/1996/659/845; 41/1996/660/846; 42/1996/661/847 and 43/1996/662/848.

There appeared before the Court:

(a) *for the Government*

Mr G. RAIMONDI, <i>magistrato</i> , on secondment to the Diplomatic Legal Service, Ministry of Foreign Affairs,	<i>co-Agent,</i>
Mr G. MANZO, <i>magistrato</i> , on secondment to the Legislation Office, Ministry of Justice,	<i>Adviser;</i>

(b) *for the Commission*

Mr A. PERENIČ,	<i>Delegate;</i>
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(c) *for the applicant*

Mr F. ROMANO, <i>avvocato</i> , of the Benevento Bar,	<i>Counsel,</i>
Mr C. CHIAROMONTE, Lawyer,	<i>Adviser.</i>

The Court heard addresses by Mr Perenič, Mr Manzo, Mr Raimondi and Mr Romano, and the latter's reply to a question asked by one judge.

AS TO THE FACTS

7. Mrs Maria Rosaria Lapalorcia, who is employed as a children's welfare officer by the province of Benevento (Campania), lives in Benevento.

8. On 20 October 1980 Benevento Provincial Council (*Giunta Provinciale*) authorised its president to request the secondment of the applicant, who was at that time a civil servant working in a clinic (*Ente Antitracomatoso*) belonging to Foggia Provincial Council (Apulia). On 25 February 1981 the clinic agreed to the applicant's secondment.

On 31 March 1981 Benevento Provincial Council took formal note that Mrs Lapalorcia had commenced her new duties on 4 March 1981 and undertook to reimburse to the clinic the salary it would continue to pay the applicant during the whole period of her secondment.

9. On 1 June 1981 the Foggia local health unit ("the *USL*") took over the work of the clinic, which had continued to pay the applicant's salary until 31 May.

10. On 16 June 1982 Mrs Lapalorcia, who was on maternity leave, asked Benevento Provincial Council to pay her salary, which she had not received for a year.

11. On 27 September 1982 the Council informed the Foggia *USL* of its decision to pay the sum owed and requested the information it needed to enable it to proceed. On 22 October 1983 it ordered payment of the salary owed for the period from 1 June 1981 to 31 July 1982 and salary falling due

thereafter. However, the applicant received only part of the amount she was entitled to (12,817,232 Italian lire).

12. On 22 November 1988 Mrs Lapalorcia instituted proceedings in the Campania Regional Administrative Court ("the RAC") seeking an order requiring Benevento Provincial Council to pay her the amount owed in full, after adjustment for inflation and the addition of interest at the statutory rate.

On 7 December 1988 she filed an application with the registry of the RAC asking for a date to be fixed for the hearing. On 28 April 1994 she applied for the case to be set down for an urgent hearing.

13. In a judgment of 8 November 1994, the text of which was deposited with the registry on 24 November 1994, and which became final on 19 January 1995, the RAC gave judgment in the applicant's favour.

PROCEEDINGS BEFORE THE COMMISSION

14. Mrs Lapalorcia applied to the Commission on 12 May 1994. She complained of the length of proceedings in the Campania Regional Administrative Court and relied on Article 6 § 1 of the Convention.

15. On 6 July 1995 the Commission declared the application (no. 25586/94) admissible. In its report of 28 November 1995 (Article 31) it expressed the opinion by twenty-four votes to five that there had been a breach of Article 6. The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment⁵.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

16. The Government asked the Court to hold that there had been no breach of Article 6 § 1.

5. *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* - 1997), but a copy of the Commission's report is available from the registry.

AS TO THE LAW

I. SCOPE OF THE CASE

17. In her memorial to the Court the applicant relied on Article 6 § 1 of the Convention in connection with the “reasonable time” requirement and the “fair and public hearing” requirement.

18. This latter complaint, however, falls outside the scope of the case as defined by the Commission’s decision on admissibility, since it was not examined either in that decision or in the report (see, among other authorities, the *Scollo v. Italy* judgment of 28 September 1995, Series A no. 315-C, p. 51, § 24, and the *Hussain v. the United Kingdom* judgment of 21 February 1996, *Reports of Judgments and Decisions* 1996-I, p. 266, § 44).

The scope of the case is therefore limited to the question whether a “reasonable time” was exceeded.

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

19. Mrs Lapalorcia complained of the length of the proceedings she had brought in the Campania Regional Administrative Court (“the RAC”). She 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 ...”

A. Applicability of Article 6 § 1

20. In the present case it has not been contested that Mrs Lapalorcia had a right.

Furthermore, the Government accepted that Article 6 was admissible, since the dispute concerned a difference between the amount of remuneration owed to the applicant by Benevento Provincial Council and the amount she had actually been paid, so that the private-law features of the case predominated over the public-law features.

21. The Court agrees. It notes that the applicant asserted a purely economic right legally derived from her work during her secondment to Benevento Provincial Council (see, *mutatis mutandis*, the *Massa v. Italy* judgment of 24 August 1993, Series A no 265-B, p. 20, § 26, and the *Francesco Lombardo v. Italy* judgment of 26 November 1992, Series A no. 249-B).

Accordingly, Article 6 § 1 is applicable.

B. Compliance with Article 6 § 1

22. It remains to be determined whether a “reasonable time” was exceeded. The Commission and the applicant answered that question in the affirmative, the Government in the negative.

23. The Court observes that the period to be taken into consideration began on 22 November 1988, the date of the application to the RAC, and ended on 19 January 1995, when the RAC’s judgment of 8 November 1994 became final (see paragraphs 12 and 13 above), that is approximately six years and two months.

24. 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).

25. The Government submitted that the delay complained of was not long enough to breach the Convention.

26. Like the Commission and the applicant, the Court notes that, despite the latter’s attempts to have a date fixed for the hearing for oral argument (see paragraph 12 above), the RAC waited for nearly six years before giving judgment in a case which was of no particular complexity.

Accordingly, a “reasonable time” was exceeded and there has therefore been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION

27. According to Article 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.”

A. Damage

28. Mrs Lapalorcia claimed 30,000,000 Italian lire (ITL) in respect of the pecuniary damage sustained on account of the late settlement of her case. She submitted that if it had been tried within a reasonable time she would have paid tax at a lower rate on the sum she received.

As regards non-pecuniary damage, the applicant claimed ITL 25,000,000, arguing that the late payment of the sums in question could by no means be regarded as satisfactory if the privations she had suffered for years were taken into consideration.

29. The Government drew attention to the fact that no evidence of the alleged pecuniary damage had been adduced and argued that if the Court were to rule that there had been a breach of Article 6 of the Convention, that would constitute sufficient just satisfaction for non-pecuniary damage.

30. The Delegate of the Commission submitted that the Court should award just satisfaction, but did not suggest a figure.

31. The Court considers that the applicant undoubtedly sustained pecuniary and non-pecuniary damage which the mere finding of a violation cannot make good, and accordingly awards her ITL 15,000,000.

B. Costs and expenses

32. The applicant claimed reimbursement of lawyers' fees of ITL 15,582,686 for her representation before the Convention institutions, in respect of which she submitted supporting documentary evidence.

33. The Delegate of the Commission made no observation, whereas the Government left the matter to the discretion of the Court, which awards the applicant, on the basis of the information in its possession and its case-law on this subject, the sum in question.

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 5% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* by seven votes to two that Article 6 § 1 of the Convention is applicable and has been breached;
2. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months, 15,000,000 (fifteen million) Italian lire for pecuniary and non-pecuniary damage and 15,582,686 (fifteen million five hundred and eighty-two thousand six hundred and eighty-six) lire for costs and expenses;
 - (b) that simple interest at an annual rate of 5% shall be payable on these amounts from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* unanimously 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 2 September 1997.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Mr Pekkanen;
- (b) dissenting opinion of Mr Bernhardt, joined by Mr Baka.

Initialled: R. B.
Initialled: H. P.

CONCURRING OPINION OF JUDGE PEKKANEN

I have voted for the applicability of Article 6 § 1 of the Convention in the present case for the reasons set out in my dissenting opinion in the cases of *Spurio*, *Gallo*, *Zilaghe*, *Laghi*, *Viero*, *Orlandini*, *Ryllo*, *Soldani*, *Fusco*, *Di Luca and Saluzzi*, *Pizzi*, *Scarfò*, *Argento* and *Trombetta v. Italy* (see the Court's judgments of today's date).

DISSENTING OPINION OF JUDGE BERNHARDT,
JOINED BY JUDGE BAKA

In eighteen cases against Italy which have been decided by the same Chamber at the same time, the Court has found Article 6 § 1 of the Convention applicable in four cases and non-applicable in the remaining fourteen cases.

All cases are concerned with claims brought by civil servants against public or administrative authorities, and they all had financial implications. The Court implicitly takes as its starting-point the general principle stated in its case-law that where a claimed entitlement, including a purely pecuniary one, discloses features of both public and private law, Article 6 § 1 will be applicable if the latter are predominant (see, for example, the *Feldbrugge v. the Netherlands* judgment of 29 May 1986, Series A no. 99, pp. 13–16, §§ 30–40, and the *Deumeland v. Germany* judgment of the same date, Series A no. 100, pp. 22–25, §§ 60–74, where the asserted pecuniary claims were for social-security benefits). The reason for the distinction drawn between the four cases in which Article 6 is found to be applicable and those in which it is not is held by the Court to reside in the essentially pecuniary and economic character of the asserted right. I am not convinced by this distinction, and I consider Article 6 of the Convention inapplicable in all eighteen cases, including the present one. To my mind, a proper and adequate delimitation can only be found if in principle all disputes concerning the conditions of employment in the civil service are deemed to fall outside the ambit of Article 6 of the Convention. Such a result is in my view compatible with the existing case-law of the Court.

In its recent judgment in the case of *Neigel v. France*, the Court observed that “in the law of many member States of the Council of Europe there is a basic distinction between civil servants and employees governed by private law”; and that this had led it in previous judgments to hold that “disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of Article 6 § 1” (17 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 410–11, § 43, and the authorities cited there). The dispute raised by the applicant in the *Neigel* case – over a refusal to reinstate her to a permanent post in the French civil service – related, so the Court found, to her “recruitment”, her “career” and the “termination of [her] service”. Accordingly, despite the fact that her entitlement to reinstatement was not conditioned by the exercise of discretionary power by the French State, the dispute did not concern a “civil” right within the meaning of Article 6 § 1. Her accompanying pecuniary claim for payment of salary did not attract the application of Article 6 § 1 because its successful outcome was directly dependent on a finding of unlawfulness as regards the refusal to reinstate her (*ibid.*, p. 411, § 44).

As I see it, the phrase “recruitment, careers and termination of service” is to be read as a whole, covering the employment relationship between a civil servant and the State from its inception to its termination. It would be artificial to hold, for example, that pecuniary claims dependent on “career” moves in the narrow sense, such as promotion, transfer and reinstatement, should be outside the scope of Article 6 § 1, whereas those dependent on other aspects of the rules governing remuneration under the employment relationship should not. I fail to perceive how in the latter category the features of private law are predominant if they are not in the former category. In my view, in both categories the features of public law are predominant precisely because of “the basic distinction between civil servants and employees governed by private law”.

It is true that claims for payment of civil-service pensions have been held by the Court to concern “civil” rights within the meaning of Article 6 § 1 (see the *Francesco Lombardo v. Italy* judgment of 26 November 1992, Series A no. 249-B, and the *Massa v. Italy* judgment of 24 August 1993, Series A no. 265-B). However, as pointed out in the *Neigel* judgment, the applicants in these cases were asserting “claims for purely pecuniary rights arising in law *after* termination of service” (emphasis added) and “the Italian State was not using ‘discretionary powers’ in performing its obligation to pay the pensions in issue and could be compared to an employer who was a party to a contract of employment governed by private law” (loc. cit., pp. 410–11, § 43). In such circumstances, the features of private law, taken together and cumulatively, will confer on an entitlement to a civil-service pension the character of a “civil” right within the meaning of Article 6 § 1.

The undoubted pecuniary character of Mrs Lapalorcia’s claim for payment of the remuneration which, she asserted, was owed to her and the absence of the exercise of discretionary powers by the Italian State are therefore insufficient on their own to warrant the conclusion that the right in issue was a “civil” one for the purposes of Article 6 § 1 of the Convention.

In summary, Article 6 § 1 of the Convention is, in my view, not applicable in this case.