



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

AFFAIRE BOTTAZZI c. ITALIE

CASE OF BOTTAZZI v. ITALY

(Requête n°/Application no. 34884/97)

ARRÊT/JUDGMENT

STRASBOURG

28 juillet/July 1999

In the case of Bottazzi v. Italy,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), as amended by Protocol No. 11¹, and the relevant provisions of the Rules of Court², as a Grand Chamber composed of the following judges:

Mrs E. PALM, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. FERRARI BRAVO,
Mr G. BONELLO,
Mr R. TÜRMESEN,
Mr J.-P. COSTA,
Mrs F. TULKENS,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr W. FUHRMANN,
Mr M. FISCHBACH,
Mr V. BUTKEVYCH,
Mr J. CASADEVALL,
Mrs H.S. GREVE,
Mr A.B. BAKA,
Mr R. MARUSTE,
Mrs S. BOTOCHAROVA,

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

Having deliberated in private on 27 January and 3 and 24 June 1999,

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

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention³, by the Italian Government (“the Government”) on 15 July 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 34884/97) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 by an Italian national, Mr Emilio Bottazzi, on 26 October 1995.

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

The Government's application referred to former Articles 44 and 48 as amended by Protocol No. 9¹, which Italy had ratified, and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (former 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.

2. The applicant designated Mr A. Croce as the person who would represent him (Rule 31 of former Rules of Court B²).

3. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr Thór Vilhjálmsson, Vice-President of the Court at the time, acting through the Registrar, consulted Mr U. Leanza, the Agent of the Government, the applicant's lawyer and Mr. B. Conforti, the Delegate of the Commission, on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 4 November 1998 and the Government's memorial on 17 November 1998.

4. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof and in the interests of the proper administration of justice, the present case and the cases of A.L.M., Di Mauro, A.P. and Ferrari v. Italy³ were referred to the same Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr Conforti, the judge elected in respect of Italy (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr A. Pastor Ridruejo, Mr G. Bonello, Mr J. Makarczyk, Mr P. Kūris, Mr R. Türmen, Mrs V. Strážnická, Mr P. Lorenzen, Mr V. Butkevych, Mrs H.S. Greve, Mr A.B. Baka, Mr R. Maruste and Mrs S. Botoucharova (Rule 24 § 3 and Rule 100 § 4). Subsequently Mr Conforti, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Mr L. Ferrari Bravo, the judge elected in respect of San Marino, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

Notes by the Registry

1. Protocol No. 9 came into force on 1 October 1994 and was repealed by Protocol No. 11.
2. Rules of Court B, which came into force on 2 October 1994, applied until 31 October 1998 to all cases concerning States bound by Protocol No. 9.
3. Applications nos. 35284/97, 34256/96, 35265/97 and 33440/96.

5. The President decided that it was not necessary to invite the Commission to nominate a delegate in the case (Rule 99).

6. After consulting the Agent of the Government and the applicant's representative, the Grand Chamber decided that it was not necessary to hold a hearing.

7. On 23 December 1998 the Registrar received additional observations from the applicant.

8. Subsequently Mrs Palm replaced Mr Wildhaber, who was unable to take part in the further consideration of the case, as President of the Grand Chamber, and Mr W. Fuhrmann, substitute judge, replaced him as a member of the Chamber (Rules 10 and 24 § 5 (b)). Mrs F. Tulkens and Mr J. Casadevall, substitute judges, replaced Mr Kūris and Mr Makarczyk respectively, who were likewise unable to take part in the further consideration of the case (Rule 24 § 5 (b)).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

9. Mr Bottazzi, who was born in Ligonchio (Reggio Emilia) in 1916, lives in Genoa.

10. The applicant was wounded in the Second World War and in 1949 was granted an invalidity allowance. This was stopped in 1956. On 15 January 1972 the applicant requested a war pension on the ground that his health had deteriorated. On 30 May 1984 the Treasury rejected his request. On 19 June 1988 the War Pensions Department (part of the Treasury) rejected a fresh request from the applicant dated 20 January 1986 on the ground that his health had not deteriorated. The applicant lodged an appeal to a higher authority, seeking to have the decision of 19 June 1988 annulled by the Minister of Financial Affairs. His appeal was rejected on 1 September 1990 by the War Pensions Department. On 28 March 1991 the applicant lodged an administrative complaint asking the Minister to annul the decision of 1 September 1990.

11. On 29 March 1991 the Minister of Financial Affairs referred that complaint to the Court of Audit, where it arrived on 4 April 1991. On 15 May 1991 the Court of Audit asked the Treasury to send it the applicant's case file. On 23 September 1993 the president of the court set the case down for hearing on 7 January 1994. The applicant's lawyer filed pleadings on 27 December 1993. In a judgment of 7 January 1994, which was deposited with the registry on 16 June 1994 and served on the applicant on 2 May 1995, the Court of Audit declared the application inadmissible on the ground that the applicant had lodged an administrative complaint, relying on the provisions governing appeals to a higher authority, and had had no intention of bringing legal proceedings.

12. On 28 October 1995 the applicant appealed. He submitted that if he had been aware of the correct procedure he would certainly have applied to the Court of Audit. On 8 November 1996 the applicant applied to have the appeal set down for a hearing and deliberations. On 26 November 1996 the president set it down for hearing on 1 April 1997. On 28 March 1997 the applicant applied for an adjournment and the hearing was postponed until 18 November 1997.

13. In a decision of that date, the text of which was deposited with the registry on 2 December 1997, the Court of Audit declared the applicant's appeal inadmissible.

PROCEEDINGS BEFORE THE COMMISSION

14. Mr Bottazzi applied to the Commission on 26 October 1995. He complained that his case had not been heard within a reasonable time as required by Article 6 § 1 of the Convention.

15. The Commission (First Chamber) declared the application (no. 34884/97) admissible on 28 October 1997. In its report of 10 March 1998 (former Article 31 of the Convention), 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.

FINAL SUBMISSIONS TO THE COURT

16. The Government asked the Court to hold that there had not been a violation of Article 6 § 1 of the Convention.

17. The applicant's representative asked the Court to hold that there had been a violation of Article 6 § 1 and to award his client just satisfaction.

THE LAW

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

18. The applicant claimed that he had been a victim of a violation of Article 6 § 1 of the Convention, which provides:

1. *Note by the Registry.* For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

19. The applicant submitted that the period to be taken into consideration had begun on 15 January 1972, when he applied to the Treasury for a review of the decision to stop paying him his pension (see paragraph 10 above).

20. The Government contended that the proceedings prior to the referral of the claim to the Court of Audit should not be taken into consideration because they had been conducted before the administrative authorities.

21. The Commission, whose decision of 28 October 1997 delimits the compass of the case subsequently referred to the Court (see, among other authorities, the *Zimmermann and Steiner v. Switzerland* judgment of 13 July 1983, Series A no. 66, p. 10, § 23), declared admissible and examined the application only in respect of the period from 4 April 1991, the date on which the Court of Audit received the applicant's complaint of 28 March 1991 (see paragraphs 10 and 11 above). The proceedings in question therefore began on 4 April 1991 and ended on 2 December 1997, when the Court of Audit's judgment was deposited with the registry. They therefore lasted almost six years and eight months.

22. The Court notes at the outset that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet the requirements of this provision (see the *Salesi v. Italy* judgment of 26 February 1993, Series A no. 257-E, p. 60, § 24). It wishes to reaffirm the importance of administering justice without delays which might jeopardise its effectiveness and credibility (see the *Katte Klitsche de la Grange v. Italy* judgment of 27 October 1994, Series A no. 293-B, p. 39, § 61). It points out, moreover, that the Committee of Ministers of the Council of Europe, in its Resolution DH (97) 336 of 11 July 1997 (Length of civil proceedings in Italy: supplementary measures of a general character), considered that “excessive delays in the administration of justice constitute an important danger, in particular for the respect of the rule of law”.

The Court next draws attention to the fact that since 25 June 1987, the date of the *Capuano v. Italy* judgment (Series A no. 119), it has already delivered 65 judgments in which it has found violations of Article 6 § 1 in proceedings exceeding a “reasonable time” in the civil courts of the various regions of Italy. Similarly, under former Articles 31 and 32 of the Convention, more than 1,400 reports of the Commission resulted in resolutions by the Committee of Ministers finding Italy in breach of Article 6 for the same reason.

The frequency with which violations are found shows that there is an accumulation of identical breaches which are sufficiently numerous to amount not merely to isolated incidents. Such breaches reflect a continuing situation that has not yet been remedied and in respect of which litigants have no domestic remedy.

This accumulation of breaches accordingly constitutes a practice that is incompatible with the Convention.

23. The Court has examined the facts of the present case in the light of the information provided by the parties and the above-mentioned practice. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

Accordingly, there has been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

25. Mr Bottazzi claimed 150,000,000 Italian lire (ITL) for the pecuniary and non-pecuniary damage which he alleged that he had sustained.

26. The Government stressed that the applicant had failed to adduce evidence of any pecuniary damage sustained as a result of the length of the proceedings in question. As regards non-pecuniary damage, if any, the Government submitted that the finding of a violation would in itself constitute adequate just satisfaction.

27. The Court agrees with the Government on the first point. However, the applicant must have sustained some non-pecuniary damage which the mere finding of a violation cannot adequately compensate. The Court therefore awards him ITL 15,000,000.

B. Costs and expenses

28. The applicant also claimed reimbursement of ITL 14,359,900 in respect of his costs and expenses before the Commission and the Court and an unquantified sum for assistance given by a trade-union organisation of which he is a member.

29. The Government left the matter to the discretion of the Court.

30. According to the Court’s case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and

necessarily incurred by the applicant and are reasonable as to quantum. In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that ITL 7,000,000 is a reasonable sum and awards the applicant that amount.

C. 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 2.5% 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, 15,000,000 (fifteen million) Italian lire for non-pecuniary damage and 7,000,000 (seven million) Italian lire for costs and expenses;
 - (b) that simple interest at an annual rate of 2.5% shall be payable on those sums from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 July 1999.

For the President

András BAKA
Judge

Paul MAHONEY
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Türmen is annexed to this judgment.

A.B.B.
P.J.M.

PARTLY DISSENTING OPINION OF JUDGE TÜRMEŒ

I am in agreement with the other judges that there has been a violation of Article 6 § 1 of the Convention in the present case.

However, I cannot agree with paragraph 22 of the judgment where the Court states that the numerous violations of Article 6 § 1 by Italy constitute a practice that is incompatible with the Convention.

It is established in the case-law of the Court that the concept of administrative practice embodies two criteria:

(1) an accumulation of identical or analogous breaches, which are sufficiently numerous and interconnected to amount not merely to isolated incidents or exceptions but to a pattern or system;

(2) official tolerance.

The Commission in the “Greek Case” (Yearbook 12) described the second criterion as “... they are tolerated in the sense that the superiors of those immediately responsible, though cognisant of such acts, take no action to punish them or to prevent their repetition ...”.

In the present case the Court, when deciding whether a practice existed in the Italian length-of-proceedings cases, relied solely on the first criterion, i.e. an accumulation of identical breaches, but failed to address the second criterion, i.e. official tolerance.

In my view, the Court should not have decided that there is an administrative practice without examining whether the higher authorities of the State, though aware of the existence of the breaches, refuse to take action to prevent their repetition.

Had the Court examined whether the requirements of the second criterion were met in the present case, it would have found out that there is an ongoing dialogue between the Committee of Ministers of the Council of Europe and the Italian government, in the course of which the government has provided detailed information on the measures that are being taken, and will be taken in the future, in order to solve the problem of the excessive length of proceedings.

In this connection, it is noteworthy that in its resolution adopted on 15 July 1999, the Committee of Ministers welcomes “the considerable increase in the efficiency of the [Italian] courts in terms of cases resolved ...” and decides “to resume, in one year at the latest, the examination of the question whether the announced measures will effectively prevent new violations of the Convention ...”.

The Court too might have chosen to wait for a year to see if the steps taken by the Italian government bore positive results. However, the Court deprived itself of this option as it did not deal with the question of official tolerance and the attitude of the Italian government.