



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

CASE OF A.L.M. v. ITALY

(Application no. 35284/97)

JUDGMENT

STRASBOURG

28 July 1999

In the case of A. L. M. 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 Court,² 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 Convention,³ by the Italian Government (“the Government”) on 8 September 1998. It originated in an application (no. 35284/97) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) on 9 February 1995 under former Article 25. The applicant asked the Court not to reveal his identity.

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 N. Sardi as the lawyer 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 R. Bernhardt, the 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 12 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 Bottazzi, 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 B. 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). Later the Government 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. Cases nos. 34884/97, 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 lawyer, the Grand Chamber decided that it was not necessary to hold a hearing.

7. On 28 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)).

AS TO THE FACTS

THE CIRCUMSTANCES OF THE CASE

9. The applicant, who was born in 1939, lives in Milan.

10. On 11 September 1992 he instituted proceedings against a public limited company, L., and Mr M. in the Milan District Court. He sought a declaration that Mr M., who owed him money, was himself a creditor of L. and an order that L. should consequently pay him (the applicant) 250,575,000 Italian lire (ITL).

11. The preparation of the case began on 26 November 1992. On 2 June 1994, following two hearings dealing with the production of documents, the parties filed their pleadings and the judge responsible for preparing the case for trial set it down for hearing by the appropriate chamber on 29 November 1995.

12. In a judgment of that date, the text of which was deposited with the registry on 14 March 1996, the court dismissed the applicant's action.

PROCEEDINGS BEFORE THE COMMISSION

13. Mr A. L. M. applied to the Commission on 9 February 1995. He complained that his case had not been heard within a reasonable time as required by Article 6 § 1 of the Convention.

14. The Commission (First Chamber) declared the application (no. 35284/97) admissible on 9 December 1997. In its report of 10 March 1998 (former Article 31), it expressed the opinion that there had been a violation of Article 6 § 1 (fourteen votes to two)¹.

AS TO THE LAW

15. Under former Article 32 of the Convention,

“If the question is not referred to the Court in accordance with Article 48 of this Convention within a period of three months from the date of the transmission of the report to the Committee of Ministers, the Committee of Ministers shall decide... whether there has been a violation of the Convention.”

16. The Court notes that the Government's application of 7 September 1998 bringing the case before the Court arrived at the Registry on 8 September, whereas the Commission's report was transmitted to the Committee of Ministers on 13 May 1998.

17. The Government maintained that the three-month period provided for in former Article 32 had not expired by the time that their application was lodged. In their submission, the rule contained in Law no. 742 of 7 October 1969 (and also, they asserted, in the legislation of other European countries) that procedural time-limits in the “ordinary and administrative courts” were suspended during judicial vacations was a “general” principle which applied to proceedings in the Court.

18. The applicant requested the Court to dismiss the Government's application as being out of time.

19. The Court points out that under former Article 47 of the Convention an application had to be lodged within the three-month period laid down by former Article 32. No provision allowing an exemption from that requirement was to be found in either the Convention or the Rules of Court as applicable at the time the application was lodged.

Furthermore, even supposing that the rule on the suspension of procedural time-limits during “judicial vacations” did exist in the legislation of countries other than Italy, the Court considers that the Government failed to establish the existence of a generally recognised principle of law, inherent in former Article 32 of the Convention, to the effect that procedural time-limits are suspended during judicial vacations.

1. *Note by the Registry.* A copy of the Commission's report is obtainable from the Registry.

The Government therefore exceeded the time allowed them. Furthermore, no special circumstance of a nature to suspend the running of time or justify its starting to run afresh is apparent from the file (see, *mutatis mutandis*, the following judgments: *Istituto di Vigilanza v. Italy*, 22 September 1993, Series A no. 265-C, p. 35, § 14; *Figus Milone v. Italy*, 22 September 1993, Series A no. 265-D, p. 43, § 14; *Goisis v. Italy*, 22 September 1993, Series A no. 265-E, p. 51, § 19; *Morganti v. France*, 13 July 1995, Series A no. 320-C, p. 48, § 14; and *Avis Enterprises v. Greece*, 30 July 1998, *Reports of Judgments and Decisions* 1998-V, p. 2106, § 17).

The Government's application bringing the case before the Court is consequently inadmissible as it was made out of time.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that it is unable to take cognisance of the merits of the case.

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