



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

AFFAIRE DI MAURO c. ITALIE

CASE OF DI MAURO v. ITALY

(Requête n°/Application no. 34256/96)

ARRÊT/JUDGMENT

STRASBOURG

28 juillet/July 1999

In the case of Di Mauro 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. TÜRMEŒ,
Mr J.-P. COSTA,
Mrs F. TULKENS,
Mrs V. STRÁŒNICKÁ,
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. BOTOUCHAROVA,

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 3 September 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 34256/96) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 by an Italian national, Mr Sebastiano Di Mauro, on 30 January 1996.

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 Mrs C.L. Virgara 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 16 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, A.L.M., 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. 34884/97, 35284/97, 35265/97 and 33440/96.

5. The President decided that it was not necessary to invite the Commission to appoint a delegate (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 11 January 1999 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 Di Mauro, who was born in 1937, lives in Terracina (Rome).

10. On 5 March 1984 Mrs V., the owner of a flat rented by the applicant, instituted proceedings against him in the Rome magistrate's court. She sought to have the lease terminated – because of late payment of the rent – and the applicant evicted.

11. The preparation of the case for trial began on 21 March 1984 and, after two hearings, ended on 27 June 1984. In an order of 18 July 1984 the court dismissed the landlady's application for a possession order and directed that if the parties wished to pursue the proceedings, they should do so in the Rome District Court within three months.

12. Mrs V. pursued the proceedings in that court on 21 September 1984. The preparation of the case for trial began on 5 November 1984 and, after four hearings (two of which dealt with the applicant's instruction of a lawyer), ended on 10 June 1985, when the parties made their final submissions. The hearing before the relevant division of the court was held on 22 September 1986. In a judgment of the same date, the text of which was deposited with the registry on 9 October 1986, the court dismissed the landlady's application.

13. The landlady appealed on 18 December 1986. The preparation of the appeal for hearing began on 11 February 1987 and ended at the following hearing, on 18 March 1987, when the parties made their final submissions. The appeal was heard by the relevant division of the Rome Court of Appeal on 23 June 1987. In a judgment of 7 July 1987, the text of which was

deposited with the registry on 15 October 1987, the court dismissed the appeal.

14. On 15 January 1988 the landlady appealed on points of law to the Court of Cassation. The hearing was held on 19 June 1991. In a judgment of the same date, the text of which was deposited with the registry on 20 March 1992, the court quashed the Court of Appeal's judgment and remitted the case to a different division of the Court of Appeal.

15. On 12 March 1993 Mrs V. resumed the proceedings in the Court of Appeal. The preparation of the appeal for hearing began on 29 April 1993 and, after two hearings, ended on 24 February 1994, when the parties made their final submissions. The appeal was heard by the relevant division on 14 June 1995. In a judgment of 5 July 1995, the text of which was deposited with the registry on 7 September 1995, the Court of Appeal terminated the lease on the ground that Mr Di Mauro was in breach of its terms.

16. On 29 February 1996 the applicant appealed on points of law to the Court of Cassation. After the hearing on 7 January 1997 the court gave its judgment, the text of which was deposited with the registry on 13 May 1997; it quashed the Court of Appeal's judgment and remitted the case to a different division of the Court of Appeal. It gave the parties three months in which to resume the proceedings. According to information provided by the applicant's lawyer, the proceedings automatically lapsed on 27 December 1997, as neither party had resumed them.

PROCEEDINGS BEFORE THE COMMISSION

17. Mr Di Mauro applied to the Commission on 30 January 1996. He complained that his case had not been heard within a reasonable time as required by Article 6 § 1 of the Convention.

18. The Commission (First Chamber) declared the application (no. 34256/96) admissible on 3 December 1997. In its report of 20 May 1998 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of Article 6 § 1 (ten votes to six). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

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

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.

20. Counsel for the applicant asked the Court to hold that there had been a violation of Article 6 § 1 and to award her client just satisfaction.

THE LAW

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

21. The applicant claimed that he had been a victim of a violation of 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 ...”

22. The period to be taken into consideration began on 5 March 1984, when proceedings were instituted against the applicant in the Rome magistrate’s court. It ended on 27 December 1997, when the proceedings lapsed on account of the parties’ failure to resume them. It therefore lasted almost thirteen years and ten months.

23. 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.

24. 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

25. 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

26. Mr Di Mauro claimed 50,000,000 Italian lire (ITL) for the non-pecuniary damage which he alleged that he had sustained.

27. The Government regarded the amount sought as wholly unjustified.

28. The Court considers that the applicant must have sustained some non-pecuniary damage and awards him ITL 5,000,000.

B. Costs and expenses

29. The applicant also claimed reimbursement of ITL 25,431,440 in respect of his costs and expenses before the Commission and the Court.

30. The Government regarded those claims as excessive.

31. 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 the sum of ITL 10,000,000 to be reasonable and awards the applicant that amount.

C. Default interest

32. 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

1. *Holds* by fifteen votes to two that there has been a breach of Article 6 § 1 of the Convention;
2. *Holds* by eleven votes to six that the respondent State is to pay the applicant, within three months, 5,000,000 (five million) Italian lire for non-pecuniary damage;
3. *Holds* by fifteen votes to two that the respondent State is to pay the applicant, within three months, 10,000,000 (ten million) Italian lire for costs and expenses;
4. *Holds* unanimously 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;
5. *Dismisses* unanimously the remainder of the applicant's claim 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 following dissenting opinions are annexed to this judgment:

- (a) partly dissenting opinion of Mrs Greve;
- (b) partly dissenting opinion of Mr Türmen;
- (c) dissenting opinion of Mr Ferrari Bravo;
- (d) dissenting opinion of Mr Costa.

A.B.B.

P.J.M.

PARTLY DISSENTING OPINION OF JUDGE GREVE

I voted with the majority of my colleagues on all points except the question of just satisfaction.

According to the Court's established case-law, the word "victim" in the context of Article 34 (former Article 25) denotes the person directly affected by the act or omission in issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice; prejudice is relevant only in the context of Article 41 (former Article 50). Consequently, a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among many other authorities, the *Amuur v. France* judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; the *Lüdi v. Switzerland* judgment of 15 June 1992, Series A no. 238, p. 18, § 34; and the *Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, p. 30, § 66).

In the present case the applicant, who is in breach of the terms of his lease, cannot legally be required to vacate the flat although his landlady has tried to achieve this in legal proceedings lasting from 5 March 1984 to 13 May 1997, that is for more than thirteen years and two months. Throughout the whole of this period the applicant has benefited from the "shield" or respite afforded to him by the lengthy litigation, which has enabled him to remain a tenant and stay in the flat regardless of his being in default.

Article 41 of the Convention provides that the Court shall, if necessary, afford just satisfaction to "the injured party". Under the particular circumstances of the case I do not find that the applicant qualifies as an "injured party" and thus for an award of just satisfaction.

As an *obiter dictum* I note that the Court's case-law referred to above primarily concerns criminal cases, and cases pertaining to the use of restrictive measures and official permits. Considering the rationale behind Article 34, I leave open the question as to whether it is wise and rational to allow for such a broad interpretation of the word "victim" in cases such as the present one.

PARTLY DISSENTING OPINION OF JUDGE TÜRMEK

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

However, I cannot agree with paragraph 23 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.

DISSENTING OPINION OF JUDGE FERRARI BRAVO

(Translation)

In 1984 proceedings were instituted against the applicant, who lives in Terracina, by the owner of a flat he was renting.

Making its way through various different levels of court (including two hearings in the Court of Cassation), the case dragged on until the end of 1997, when it lapsed automatically as neither party had resumed the proceedings.

Mr Di Mauro did undoubtedly contribute to delaying the proceedings (which were flawed only in that they were excessively generous) as, in Italy, Court of Cassation judgments remitting a case to a different division of the court of appeal can result in that case lasting indefinitely.

The fact remains that Mr Di Mauro gained from those features of Italian civil proceedings by staying in a flat well beyond the expiry of the lease.

In the circumstances, I cannot vote for a decision which finds that there has been a violation of Article 6 § 1 on grounds of the excessive length of the proceedings.

Reaching such a decision is tantamount to rewarding someone who has astutely prolonged legal proceedings, whereas the proper outcome – depending on the circumstances – might be to find against them.

As to the rest, I share the opinion expressed by Judge Costa.

DISSENTING OPINION OF JUDGE COSTA

(Translation)

I did not vote with the majority, which found that there had been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings. I do of course agree that judicial authorities should be required to give their judgments within a reasonable time; moreover, I voted – as did all my fellow judges – for the finding of a violation in the Bottazzi, A.P. and Ferrari cases, which were dealt with on the same day as the instant case by the same bench.

However, I have reached the opposite conclusion in the Di Mauro case on account of its special circumstances.

The first issue is whether the applicant was indeed a “victim” for the purposes of Article 34 of the Convention. After all, before the judicial proceedings started he had been renting and occupying the flat in question; he was still doing so when those proceedings automatically lapsed; and he had done so throughout. If anyone could claim to be a victim, it was his landlady, who, alleging that Mr Di Mauro kept paying his rent late, had tried in vain to have him evicted, either in order to take possession of the flat herself or to find a more reliable tenant. It would appear from the Court’s case-law, however, that an applicant’s allegations are to be assumed to be founded, so that a decision as to whether or not he is a victim must be made on the basis of his position before as opposed to after the proceedings. Article 6 does provide: “... everyone is entitled to ... a hearing ...” without requiring their case to be successful or even arguable. It may perhaps be necessary one day to consider in greater depth the concept of victim or that of abuse of right or abuse of process, but this case is not, in my opinion, the appropriate forum.

However, there are two sets of reasons why I do not agree that Mr Di Mauro’s case was not heard within a reasonable time.

The first is one of method. The number of levels of court should, in my view, be taken into account in judging the length of the proceedings. I advocate an analytical approach, rather than merely having regard to the total length of the period in question. In terms of its total length, it was clearly excessive: thirteen years and almost ten months for an apparently simple dispute, and there is some doubt as to whether it has really been disposed of! If, on the other hand, regard is had to the length of each set of proceedings, that is, the amount of time which elapsed between referring the case to each court and that court’s judgment being made public, the proceedings in fact lasted approximately nine years and one month in six different courts, that is, an average of one and a half years per court, which in itself is not excessive even if in an ideal legal system one could do better.

Secondly, the Court's case-law takes account, not only of the complexity of the case, but also of what is at stake in the proceedings for the applicant and of the conduct of the parties (particularly the applicant) and of the national authorities. Here, particular expedition was not required for Mr Di Mauro's sake since, on the contrary, he gained from the maintenance of the status quo as a result of the proceedings. The parties themselves were largely responsible for the slowness of the proceedings, both because on several occasions they delayed in using the remedies available to them and because they were extremely litigious. In particular, the delay in using legal remedies explains why the period attributable to the courts was not nearly fourteen years, but only – so to speak – nine years.

A reasonable objection to that argument is that a judicial system which allows a dispute to go before six different courts is in itself structurally incompatible with the requirements of Article 6. I am swayed, but not entirely convinced, by that objection. There are three levels of court in many European countries, namely, first instance, appeal and appeal on points of law to a higher court (cassation). Where a court of cassation quashes a judgment, it generally remits it to a court of appeal. That was what happened here and the applicant, in turn, lodged an appeal on points of law with the Italian Court of Cassation. This explains why there were five sets of proceedings (plus the first set, which the landlady could – and probably should – have dispensed with, since she brought the case before the Rome magistrate's court, which then referred the parties to the Rome District Court). The Court acknowledges, moreover, that an appeal on points of law to the Court of Cassation is a domestic remedy which must, in theory, be attempted (see the *Remli v. France* judgment of 23 April 1996, *Reports of Judgments and Decisions* 1996-II, p. 559). That remedy often contributes to ensuring compliance with the requirement of a fair trial, which is no less important than the "reasonable time" requirement.

In sum, and irrespective of the flaws in the Italian civil court system, which – it is to be hoped – the national authorities will soon remedy, not all cases within that system are automatically dealt with in an unreasonable time; there is not an irrebuttable presumption that the State is guilty of wrongful delays and, in the present case, I find that presumption to have been rebutted.