



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

**AFFAIRE A. P. c. ITALIE
CASE OF A.P. v. ITALY**

(Requête n°/Application no. 35265/97)

ARRÊT/JUDGMENT

STRASBOURG

28 juillet/July 1999

This judgment is subject to editorial revision before its reproduction in final form in the official Reports of selected judgments and decisions of the Court.

In the case of A.P. 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. 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 23 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. 35265/97) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) under former

Notes by the Registry

1-2. Protocol No. 1 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.

Article 25 by an Italian national, Mr A.P., on 30 June 1993. The applicant asked the Court not to reveal his identity.

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. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and Rule 21 of former Rules of Court B²) 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 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 17 November 1998 and the Government's memorial on 18 November 1998.

3. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with 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.L.M. 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. 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, 35284/97 and 33440/96.

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

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

6. On 4 January 1999 the Registrar received additional observations from the applicant.

7. 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, 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

8. The applicant, who was born in Codroipo (Udine) in 1952, lives in Biauzzo di Codroipo (Udine).

9. In an order of 19 January 1990 the President of the Udine District Court ordered M.L.D. to pay the applicant a sum of money in consideration of the latter's performance of a business contract. On 19 February 1990 M.L.D. appealed to the same court against that order.

10. The preparation of the case for trial began on 30 April 1990, on which date the applicant requested a declaration that the order of 19 January 1990 could be enforced in the meantime. The judge in charge of preparing the case for trial rejected that application on 8 May 1990. Four investigative hearings – held between 1 October 1990 and 17 July 1991 – were devoted exclusively to examining requests for evidence to be admitted and, *inter alia*, witnesses to be examined. The examination of witnesses listed for 17 March 1992 was adjourned by the court to 5 May 1992, on which date six people gave evidence. The next hearing was set down for 14 December 1992, but the applicant succeeded in having it brought forward to 26 October 1992. After one further hearing, the parties lodged their final pleadings on 21 December 1992 and the judge in charge of preparing the case for trial set it down for final oral submissions before the relevant division of the court on 19 May 1994. However, the hearing was adjourned, first to 9 February 1995 because the parties had failed to appear, and then to 19 October 1995 at the request of both parties because they were trying to reach a friendly settlement.

11. In a judgment of that date, the text of which was deposited with the court registry on 28 November 1995, the court granted the applicant's claims in part.

PROCEEDINGS BEFORE THE COMMISSION

12. Mr A.P. applied to the Commission on 30 June 1993. He complained that his case had not been heard within a reasonable time as required by Article 6 § 1 of the Convention.

13. The Commission (First Chamber) declared the application (no. 35265/97) admissible on 9 December 1997. In its report of 10 March 1998 (former Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1¹.

FINAL SUBMISSIONS TO THE COURT

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

15. The applicant asked the Court to hold that there had been a violation of Article 6 § 1 and to award him just satisfaction.

AS TO THE LAW

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

16. 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...”

17. The period to be taken into consideration began on 19 February 1990, when M.L.D. appealed to the Udine District Court against the order to pay the applicant a sum of money. It ended on 28 November 1995, when the

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

Udine District Court's judgment was deposited with the registry. It therefore lasted just over five years and nine months.

18. 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 (*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 (*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 of the Convention 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.

19. 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

20. 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. Damages

21. Mr A.P. claimed 150,000,000 Italian lire (ITL) for the pecuniary and non-pecuniary damage which he alleged that he had sustained and stressed the fact that the amount he had sought to recover in the domestic proceedings was the equivalent at the material time of virtually his entire annual income.

22. The Government submitted that these claims should be rejected.

23. Having regard to the subject of the dispute, the Court considers that the applicant must undoubtedly have sustained some pecuniary and non-pecuniary damage and that he should be awarded ITL 30,000,000.

B. Costs and expenses

24. The applicant also claimed reimbursement of ITL 27,800,000 in respect of his costs and expenses before the domestic courts, comprising ITL 13,000,000 for lawyer's fees, ITL 4,500,000 for travelling expenses, ITL 7,800,000 for hours of work lost in order to attend hearings and meetings with his lawyer and ITL 2,500,000 for general expenses. He did not provide any fuller details.

25. The Government did not express a view on this point.

26. 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 8,000,000 to be reasonable and awards the applicant that amount.

C. Default interest

27. 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 breach of Article 6 § 1 of the Convention ;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, 30,000,000 (thirty million) Italian lire for pecuniary and non-pecuniary damage and 8,000,000 (eight 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 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 partly dissenting opinion of Mr Türmen is annexed to this judgment.

A. 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 in the present case.

However, I cannot agree with paragraph 18 of the judgment where the Court states that 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 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 and the Italian Government, in the course of which the Government have 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 the resolution adopted by the Committee of Ministers 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.