



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

SECOND SECTION

CASE OF LEDONNE (No. 1) v. ITALY

(Application no. 35742/97)

JUDGMENT

STRASBOURG

12 May 1999

FINAL

12/08/1999

In the case of Ledonne (no. 1) v. Italy,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr C. L. ROZAKIS, *President*,

Mr M. FISCHBACH,

Mr B. CONFORTI,

Mr P. LORENZEN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr A. BAKA,

Mr E. LEVITS, *Judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 4 May 1999,

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

PROCEDURE

1. The case originated in an application against Italy lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mr Vincenzo Ledonne (“the applicant”), on 4 April 1997. The application was registered on 23 April 1997 under file no. 35742/97.

The applicant complained that, contrary to Article 6 § 1 of the Convention, criminal proceedings brought against him had not been heard within a reasonable time.

2. On 4 March 1998 the Commission (First Chamber) decided to give notice of the application to the respondent Government and invited them to submit their observations on its admissibility and merits.

The Government submitted their observations on 22 May 1998, to which the applicant replied on 11 June 1998.

3. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 2 thereof, the application falls to be examined by the Court.

4. In accordance with Rule 52 § 1 of the Rules of Court¹, the President of the Court, Mr L. Wildhaber, assigned the case to the Second Section. The Chamber constituted within the Section included *ex officio* Mr B. Conforti, the judge elected in respect of Italy (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court), and Mr C. L. Rozakis, the President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr M. Fischbach, Mr P. Lorenzen, Mrs M. Tsatsa-Nikolovska, Mr A. Baka and Mr E. Levits (Rule 26 § 1 (b)).

1. *Note by the Registry*: the Rules of Court came into force on 1 November 1998.

5. On 1 December 1998, the Chamber declared the application admissible².

AS TO THE FACTS

6. The applicant is an Italian national, born in 1939 and resident in Cosenza. He is represented before the Court by Mr Domenico Callea, a lawyer practising in Reggio Calabria.

7. On 5 December 1990 a certain Mr B. requested the Public Prosecutor that criminal proceedings be instituted against the applicant for libel.

8. On 18 September 1991 the Locri (Reggio Calabria) Public Prosecutor informed the applicant of the charge against him and requested him to appear on 10 October 1991 in order to be questioned.

9. On 18 June 1992 the Locri Public Prosecutor summoned the applicant to appear before the Bianco (Reggio Calabria) Magistrate at a hearing on 27 April 1993. This summons was served on the applicant on 8 January 1993.

10. On 27 April 1993 the applicant applied for the summons to be declared null and void on the ground that it had not been served on the lawyer of his choice. In an order of the same day, the Bianco Magistrate ordered that a fresh summons be served. On 18 November 1993 the applicant objected that the Bianco Magistrate had no jurisdiction to deal with the case.

11. In a judgment of the same day, filed with the registry on 2 December 1993, the Bianco Magistrate declared that the case was outside its territorial jurisdiction and ordered the file to be forwarded to the Cosenza Magistrate.

12. On 31 August 1994 the Cosenza investigating judge summoned the applicant to appear before the Cosenza Magistrate at a hearing on 4 April 1995.

13. On that date the proceedings were adjourned to 16 May 1995 at the applicant's request. On 16 May 1995 the case was postponed to 19 September 1995 because the lawyers of the Cosenza Bar Association were on strike.

14. On 24 October 1995 the applicant requested for the second time that the summons be declared null and void on the ground that it had not been served on the lawyer of his choice. In an order of the same day, the Cosenza Magistrate ordered that a fresh summons be served and scheduled a hearing for 2 February 1996, at which the proceedings were adjourned to 18 June 1996 at the applicant's request. On 18 June and 13 December 1996 evidence from the applicant and some witnesses was taken.

15. On 21 February 1997 the parties presented their final pleadings.

16. In a judgment of the same day, filed with the court registry on 26 February 1997, the Cosenza Magistrate acquitted the applicant.

2. The text of the Court's decision is obtainable from the Registry.

AS TO THE LAW

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

17. The applicant complained of the length of the criminal proceedings instituted against him. He alleged a violation of Article 6 § 1 of the Convention, which provides:

“In the determination ... of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

18. The Government contested that submission on the ground that the applicant's own conduct was the main reason for the duration of the proceedings.

A. Period to be taken into consideration

19. The relevant period began on 18 September 1991, when the Locri Public Prosecutor informed the applicant of the charge against him (see paragraph 8 above). It ended on 26 February 1997, when the Cosenza Magistrate's judgment was filed with the court registry (see paragraph 16 above).

20. It therefore lasted five years, five months and eight days for one degree of jurisdiction.

B. Reasonableness of the length of the proceedings

21. According to the Court's case-law, the reasonableness of the length of proceedings must be assessed in the light of the particular 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 and the conduct of the applicant and of the authorities dealing with the case (see, among other authorities, the *Pélissier et Sassi v. France* judgment of 25 March 1999, to be published in *Reports of Judgments and Decisions* 1999, § 67, and the *Philis v. Greece* (no. 2) judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35).

22. The Government pointed out that several hearings before the Cosenza Magistrate were adjourned at the applicant's request and because of the lawyers' strike. Moreover, far from helping to expedite the proceedings, the applicant resorted to actions likely to delay matters - notably requesting on two occasions that the summons be declared null and void and contesting the jurisdiction of the Bianco Magistrate.

23. The applicant considered that an accused person cannot be blamed for having made full use of the remedies available under domestic law and

recalled that in criminal proceedings applicants are not expected to co-operate actively with the judicial authorities.

24. The Court notes that the case was not complex.

25. As to the applicant's conduct, the Court notes that the hearings of 4 April 1995 and 2 February 1996 were adjourned, respectively to 16 May 1995 and 18 June 1996, at the request of the applicant. He moreover applied for the summons to be declared null and void and contested the jurisdiction of the Bianco Magistrate. This contributed to a certain extent to a slowing down of the proceedings, as, on two occasions (27 April 1993 and 24 October 1995), the authorities dealing with the case ordered a fresh summons to be served and the Bianco Magistrate declined jurisdiction. However, the Court recalls that Article 6 does not require accused persons actively to co-operate with the judicial authorities. Neither can any reproach be levelled against them for making full use of the remedies available under domestic law. Nonetheless, such conduct constitutes an objective fact, not capable of being attributed to the respondent State, which is to be taken into account when determining whether or not the proceedings exceeded a "reasonable time" (see the *I.A. v. France* judgment of 23 September 1998, *Reports* 1998-VII, pp. 2984-2985, § 121, and the *Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, p. 36, § 82). In the present case, even if the applicant may be considered on that account to be responsible for some of the delays, this cannot justify the length of the periods in between individual hearings and certainly not the total duration of the proceedings (see, *mutatis mutandis*, the *Portington v. Greece* judgment of 23 September 1998, *Reports*, 1998-VI, p. 2632, § 29, and the *Zana v. Turkey* judgment of 25 November 1997, *Reports* 1997-VII, p. 2552, § 79).

26. The Court notes that there were two periods of inactivity imputable to the State's authorities: between 10 October 1991 (questioning of the applicant) and 27 April 1993 (date of the first hearing before the Bianco Magistrate); between 2 December 1993 (date on which the judgment declaring that the case was outside the Bianco Magistrate's territorial jurisdiction was filed with the registry) and 4 April 1995 (date of the first hearing before the Cosenza Magistrate). These two periods amount to a total of more than two years and ten months.

27. The Government did not provide any convincing explanation for these delays. In these circumstances, the Court finds that the period of more than five years and five months taken to consider the case fails to satisfy the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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. Non-pecuniary damage

29. In respect of non-pecuniary damage, the applicant sought the sum of 50,000,000 ITL.

30. The Government submitted that there was no causal link between the alleged violation of the Convention and the alleged damage and asked the Court to rule that a finding of a violation constituted sufficient just satisfaction.

31. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the criminal proceedings against him. Making its assessment on equitable basis and having regard to the circumstances of the case - in particular the fact that, on one hand, the applicant may be considered responsible for certain delays and that, on the other, he was acquitted - the Court awards the applicant 15,000,000 ITL as compensation for non-pecuniary damage.

B. Costs and expenses

32. The applicant also claimed reimbursement of legal costs and expenses incurred in the preparation of his case.

33. The Government left the matter to be assessed by the Court in an equitable manner.

34. According to the Court's established 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. However, the Court notes that the applicant did not submit details of any costs incurred. His claims must therefore be rejected (see, the *Musial v. Poland* judgment of 25 March 1999, to be published in *Reports* 1999, § 61, and, *mutatis mutandis*, the *Belziuk v. Poland* judgment of 25 March 1998, *Reports* 1998-II, p. 573, § 49).

C. Default interest

35. According to the information available to the Court, the statutory rate of interest applicable in Italy at the time of adoption of the present judgment is 2,5% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* by five votes to two that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* unanimously that the respondent State is to pay the applicant, within three months, 15,000,000 (fifteen million) Italian lire for non-pecuniary damage;
3. *Holds* unanimously that simple interest at an annual rate of 2,5% shall be payable on that sum from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English, then sent as a certified copy on 12 May 1999, according to Article 77 §§ 2 et 3 of the Rules of Court.

Christos ROZAKIS
President

Erik FRIBERGH
Registrar

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

DISSENTING OPINION OF JUDGES CONFORTI AND BAKA

Avec regret, nous ne pouvons pas nous rallier à l'opinion de la majorité dans cette affaire.

A notre avis, le requérant a contribué de manière substantielle à l'allongement de la procédure ; il ne peut donc pas se prétendre victime devant la Cour. Au lieu de se défendre sur le fond, il a à plusieurs reprises soulevé des exceptions de procédure comme celles concernant la nullité des notifications qu'on lui avait adressées ou le manque de juridiction du juge d'instance. En outre, au lieu d'attendre une nouvelle audience, il aurait pu soulever devant le juge d'instance l'exception d'incompétence en même temps que celle relative à la nullité de la notification.