



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

SECOND SECTION

CASE OF LEDONNE (No. 2) v. ITALY

(Application no. 38414/97)

JUDGMENT

STRASBOURG

12 May 1999

FINAL

12/08/1999

In the case of Ledonne (no. 2) 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 15 September 1997. The application was registered on 3 November 1997 under file no. 38414/97.

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 27 April 1998, to which the applicant replied on 3 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 16 June 1992 the Cosenza Public Prosecutor's Office requested that the applicant be committed for trial on a charge of seeking to vindicate fascism ("*apologia del fascismo*").

8. On 6 July 1992 the Cosenza investigating judge scheduled the date of the preliminary hearing for 2 November 1992.

9. In an order given on 2 November 1992 the investigating judge summoned the applicant to appear before the Cosenza District Court at a hearing on 24 June 1993.

10. The first hearing was adjourned to 26 January 1995 because of the absence of the applicant and his lawyer. At that hearing, the District Court adjourned the proceedings of its own motion to 6 June 1995 and then to 4 June 1996 because the lawyers of the Cosenza Bar Association were on strike.

11. On 4 June 1996 having regard to the fact that neither the applicant nor his lawyer had taken part in any of the hearings, the District Court appointed a duty barrister. At the latter's request, it ordered that a fresh summons be served and scheduled a hearing for 29 April 1997. On that occasion, the applicant made spontaneous statements to the Court. The lawyer of his own choosing and the Public Prosecutor presented their final pleadings.

12. In a judgment of 29 April 1997, filed with the court registry on 21 May 1997, the Cosenza District Court 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

13. 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...”

14. The Government contested that submission on the ground that the applicant’s own conduct and the workload of the domestic courts were the main reasons for the duration of the proceedings.

A. Period to be taken into consideration

15. The relevant period began on 16 June 1992, when the Cosenza Public Prosecutor requested that the applicant be committed for trial (see paragraph 7 above). It ended on 21 May 1997, when the District Court’s judgment was filed with its registry (see paragraph 12 above).

16. It therefore lasted four years, eleven months and five days for one degree of jurisdiction.

B. Reasonableness of the length of the proceedings

17. 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).

18. The Government pointed out that the delay in fixing the date of the trial hearing was due to the workload of the Cosenza District Court and noted that the lawyer of the applicant’s own choosing did not take part in any of the first three hearings.

19. The applicant recalled that the workload of a domestic court cannot absolve a Government from complying with the substantive provisions of the Convention and that in criminal proceedings applicants are not expected to co-operate actively with the judicial authorities.

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

21. As to the applicant's conduct, the Court notes that the hearings of 24 June 1993 and 4 June 1996 were adjourned, respectively until 26 January 1995 and 29 April 1997, by reason of the absence of the accused and his lawyer. Nevertheless, 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).

22. As to the hearing of 6 June 1995, adjourned to 4 June 1996 because of the lawyers' strike, the Court recalls that an event of that kind cannot in itself render a Contracting State liable with respect to the "reasonable time" requirement; however, the efforts made by the State to reduce any resultant delay are to be taken into account for the purposes of determining whether the requirement has been complied with (see Papageorgiou v. Greece judgment of 22 October 1997, *Reports* 1997-VI, pp. 2290-2291, § 47).

The Court had put to the parties a question concerning the length of this lawyers' strike. Neither the Government nor the applicant gave any answer on this point. As the parties failed to give any detail as to the strike's duration, the Court cannot determine whether the efforts made by the State were adequate. It confines itself to observing that a period of almost one year in between two individual hearings seems at first sight unduly long.

23. The Court notes that there were certain periods of inactivity imputable to the State authorities: between 16 June 1992 (date on which the Public Prosecutor requested that the applicant be committed for trial) and 2 November 1992 (date of the preliminary hearing); between 2 November 1992 and 24 June 1993 (date of the first hearing before the District Court). Moreover, on 26 January 1995 the District Court adjourned the proceedings of its own motion to 6 June 1995. As a result, the State authorities were responsible for a delay of more than one year and four months. No convincing explanation for these delays has been advanced by the respondent Government. The volume of work of the Cosenza District Court at the relevant period does not constitute such an explanation. Article 6 § 1 imposes on Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see the above-mentioned Portington v. Greece judgment, p. 2633, § 33).

24. Having regard to the delays imputable to the State authorities and to the overall duration of the proceedings, the Court concludes that the applicant's conduct is not in itself sufficient to justify the length complained of. There has accordingly been a breach of Article 6 § 1 of the Convention.

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

27. 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.

28. 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 an 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 12,000,000 ITL as compensation for non-pecuniary damage.

B. Costs and expenses

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

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

31. 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 in this respect 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

32. 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, 12,000,000 (twelve 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

A notre grand regret, nous ne pouvons pas nous rallier à l'opinion de la majorité, selon laquelle il y a eu violation de l'article 6 § 1 dans cette affaire.

En effet, le requérant a contribué de manière substantielle à l'allongement de la procédure. Il suffit de rappeler que jusqu'en 1996, ni lui ni son avocat ne se sont présentés à aucune des audiences prévues. Nous ne voyons donc pas comment, devant la Cour, le requérant peut se prétendre victime d'une violation du principe du délai raisonnable prévu à l'article 6 § 1 de la Convention.