



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

SECOND SECTION

CASE OF PESONI v. ITALY

(Application no. 39694/98)

JUDGMENT

STRASBOURG

5 October 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 Pesoni 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.B. BAKA,
Mr E. LEVITS, *Judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 28 September 1999,

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

PROCEDURE

1. The case originated in an application (no. 39694/98) 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 Francesco Pesoni ("the applicant"), on 14 October 1997. The applicant is represented by Mr M. Della Luna, a lawyer practising in Mantova. The Italian Government is represented by their Agent, Mr U. Leanza.

2. The applicant complained under Article 6 § 1 of the Convention about the length of a set of criminal proceedings. On 21 May 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 3 September 1998 to which the applicant replied on 28 September 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 was transferred to the Court.

4. In accordance with Rule 52 § 1 of the Rules of Court, 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.B. Baka and Mr E. Levits (Rule 26 § 1 (b)).

5. On 26 January 1999 the Court declared the application admissible.

6. On 22 June 1999, after an exchange of correspondence, the Section Registrar proposed to the parties to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 17 August 1999 and on 3 September 1999 respectively the applicant's representative and the Agent of the Government submitted formal declarations accepting a friendly settlement of the case.

AS TO THE FACTS

7. On 30 January 1986 the Mantova police seized some documents belonging to a limited company administered by the applicant, who was charged with some tax offences. In an order of 31 December 1991, the Rimini investigating judge committed the applicant and six other persons for trial before the Rimini District Court. In a judgment of 5 December 1995, the District Court sentenced the applicant to two years' imprisonment and to a fine of 2,000,000 lire for failure to present the compulsory taxpayers' lists and for spoliation of tax documents. On 11 January 1996, the applicant lodged an appeal with the Bologna Court of Appeal. In a judgment of 13 May 1997, filed with the registry on 31 May 1997, the Court of Appeal acquitted the applicant in respect of the charge of failure to present one specific taxpayers' list and held that the remainder of the charges brought against him were time-barred.

AS TO THE LAW

8. On 7 September 1999 the Court received the following declaration by the Italian Government:

"I declare that the Government of Italy offer to pay 10,204 Euros to Mr Pesoni with a view to securing a friendly settlement of the application registered under no. 39694/98. This sum shall cover any non-pecuniary damage as well as legal costs, and it will be payable immediately after the notification of the judgment delivered by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

The present declaration does not entail any acknowledgement by the Government of a violation of the European Convention on Human Rights in the present case.

The Government further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

9. On 19 August 1999 the Court received the following declaration signed by the applicant's representative:

"I note that the Government of Italy are prepared to pay 10,204 Euros to Mr Pesoni for non-pecuniary damage as well as legal costs with a view to securing a friendly settlement of application no. 39694/98 pending before the Court.

I accept the proposal and waive any further claims in respect of Italy relating to the facts of this application. I declare that the case is definitely settled.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

I further undertake not to request the reference of the case to the Grand Chamber pursuant to Article 43 § 1 of the Convention after the delivery of the Court's judgment."

10. The Court takes note of the agreement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

11. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list.
2. *Takes note* of the parties' undertaking not to request a re-hearing of the case before the Grand Chamber.

Done in English, then sent as a certified copy on 5 October 1999, according to Rule 77 §§ 2 et 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President