



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

SECOND SECTION

CASES OF LA BROCCA and OTHERS v. ITALY

(Applications nos. 40293/98 and 40295/98)

JUDGMENT

STRASBOURG

5 October 1999

In the cases of La Brocca and Others 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 G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA, *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 two applications (nos. 40293/98 and 40295/98) 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 four Italian nationals, Mr Vincenzo La Brocca, Mr Mario Baccari, Mr Gaetano Del Vecchio and Mr Mario Tinessa (“the applicants”), on 16 March 1998. The first applicant is represented by Mr G. Romano, a lawyer practising in Benevento, while the other applicants are represented by the first applicant, who is himself a lawyer. The Italian Government is represented by their Agent, Mr U. Leanza.

2. The applicants complained under Article 6 § 1 of the Convention about the length of a set of criminal proceedings. On 2 July 1998 the Commission (First Chamber) decided to join the applications and to give notice of them to the respondent Government, who were invited to submit their observations on the admissibility and merits of the applications. The Government submitted their observations on 28 October 1998 to which the applicants replied on 21 December 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 applications were 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 G. Bonello, Mrs V. Strážnická, Mr P. Lorenzen and Mrs M. Tsatsa-Nikolovska (Rule 26 § 1 (b)).

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

6. On 24 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 25 August 1999 and on 3 September 1999 respectively the applicants' representatives and the Agent of the Government submitted formal declarations accepting a friendly settlement of the cases.

AS TO THE FACTS

7. On 9 January 1993 the Benevento Public Prosecutor's Office requested that the applicants and ten other persons be committed for trial on charges of aggravated abuse of official authority ("*abuso d'ufficio*"). The applicants were given official notification of the charges brought against them on 14 January 1993, when they were served notice of the request for their committal for trial. In a judgment of 12 April 1994, the Benevento investigating judge acquitted the applicants in respect of some of the charges. In a separate order, he committed the applicants and ten other persons for trial before the Benevento District Court, in respect of the remainder of the charges brought against them. On 13 March 1997, the District Court declared that the order committing the accused for trial was null and void and ordered that the case-file be returned to the investigating judge. In a judgment of 24 September 1997, the investigating judge decided to discontinue the proceedings against the applicants. This decision became final on 15 October 1997.

AS TO THE LAW

8. On 3 September 1999 the Court received the following declarations by the Italian Government:

Application no. 40293/98

"I declare that the Government of Italy offer to pay 14,500,000 Italian Lire to Mr La Brocca with a view to securing a friendly settlement of the application registered under no. 40293/98. This sum shall cover any non-pecuniary damage (12 million Italian Lire) as well as legal costs (2,5 million Italian Lire), 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.

This 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."

Application no. 40295/98

"I declare that the Government of Italy offer to pay 43,500,000 Italian Lire to Mr Baccari, Mr Del Vecchio and Mr Tinessa with a view to securing a friendly settlement of the application registered under no. 40295/98. This sum shall cover any non-pecuniary damage (12 million Italian Lire to each applicant) as well as legal costs (2,5 million Italian Lire to each applicant), 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.

This 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 25 August 1999 the Court received the following declarations signed by the applicants' representatives:

Application no. 40293/98

"I note that the Government of Italy are prepared to pay 14,500,000 Italian Lire to Mr La Brocca (12 million for non-pecuniary damage and 2,5 million for legal costs) with a view to securing a friendly settlement of application no. 40293/98 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."

Application no. 40295/98

“I note that the Government of Italy are prepared to pay 43,500,000 Italian Lire to Mr Baccari, Mr Del Vecchio and Mr Tinessa (12 million for non-pecuniary damage and 2,5 million for legal costs for each person) with a view to securing a friendly settlement of application no. 40295/98 pending before the Court.

I accept the proposals 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 applicants 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 cases should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the cases out of the list.
2. *Takes note* of the parties’ undertaking not to request a re-hearing of the cases 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