



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

SECOND SECTION

CASE OF FRANCESCA v. Italy

(Application no. 40665/98)

JUDGMENT

STRASBOURG

5 October 1999

In the case of Francesca 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 an application (no. 40665/98) 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 Giancarlo Francesca (“the applicant”), on 18 March 1998. The applicant is represented by Mr Silvio Ferrara, a lawyer practising in Benevento. The Italian Government are 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 1 July 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 19 October 1998 to which the applicant replied on 4 November 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 G. Bonello, Mrs V. Strážnická, M. P. Lorenzen and Mrs. Tsatsa-Nikolovska (Rule 26 § 1 (b)).

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

6. On 29 July 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 3 August 1999 and on 3 September 1999 respectively the applicant and the Agent of the Government submitted formal declarations accepting a friendly settlement of the case.

AS TO THE FACTS

7. On 9 January 1993 the Public Prosecutor of the Benevento Court requested that the applicant be committed for trial for aggravated abuse of public authority. On 12 April 1994 the applicant was committed for trial. A number of hearings were adjourned on the ground of the Benevento lawyers' strikes. The applicant's committal for trial was found to be invalid. On 13 March 1997 the case was sent back to the Preliminary Investigations' Office. On 24 September 1997, the proceedings were discontinued.

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 23,000,000 ITL to Mr Giancarlo Francesca with a view to securing a friendly settlement of the application registered under No. 40665/98. This sum shall cover any pecuniary and non-pecuniary damage (18,000,000 ITL) as well as legal costs (5,000,000 ITL), 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."

9. On 9 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 23,000,000 ITL (18,000,000 ITL for any pecuniary and non-pecuniary damage and 5,000,000 ITL for

legal costs) to Mr Giancarlo Francesca with a view to securing a friendly settlement of application No. 40665/98 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