



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

SECOND SECTION

CASE OF SILVESTRI and others v. Italy

(Applications nos. 41327/98, 41328/98, 41329/98 and 41560/98)

JUDGMENT

STRASBOURG

5 October 1999

In the case of Silvestri and others v. Italy,

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

Mr M. FISCHBACH, *President*,
Mr B. CONFORTI,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A. BAKA, *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 four applications (no. 41327/98, 41328/98, 41329/98 and 41560/98) 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 five Italian nationals: Mr Domenico Silvestri, on 21 April 1998, Ms. Maria Cifariello, on 21 April 1998, Ms. Angela Maria Sannino, on 20 April 1998 and Mr Costantino Ruocco and Ms. Nicoletta Cozzolino, on 9 June 1998 (“the applicants”).

The first applicant is represented by Mr Maurizio Toscano, a lawyer practising in Naples; the second applicant is represented by Mr Giancarlo Biancardi, a lawyer practising in Nola (Naples); the third applicant is represented by M. Gennaro Malinconico, a lawyer practising in Torre del Greco, the fourth applicant is represented by Ms Patrizia Kivel Mazuy, a lawyer practising in Naples and the fifth applicant is represented before the Court by Mr Annibale Frizzato, a lawyer practising in Naples.

The Italian Government are 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 22 October 1998 the Commission (First Chamber) decided to give notice of the applications to the respondent Government and invited them to submit their observations on its admissibility and merits. The Government submitted their observations on 1 February 1999, 8 February 1999, 20 January 1999 and 12 January 1999 respectively, to which the applicants respectively replied on 12 March 1999, 22 March 1999, 24 February 1999 and 25 February 1999.

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 Bonello, Mrs Strážnická, Mr Lorenzen, and Mrs M. Tsatsa-Nikolovska, (Rule 26 § 1 (b)). Subsequently, Mr. Fischbach replaced Mr Rozakis, who was unable to take part in the further consideration of the case, as President of the Chamber, and Mr A. Baka, substitute judge, replaced him as a member of the chamber.

5. On 4 May 1999 the Court decided to join the applications and declared them 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 September 1999 the Government submitted formal declarations accepting a friendly settlement of the case. On 1 September 1999, 2 September 1999, 3 September 1999 and 9 September 1999 respectively, the applicants also submitted formal declarations accepting a friendly settlement of the case.

AS TO THE FACTS

7. In 1985 the applicants were informed of the opening of investigations against them under suspicion of forgery of public deeds. They were committed for trial on 14 March 1988. In 1994 the proceedings were transferred for reasons of territorial competence to the newly set up Torre Annunziata District Court. The first hearing before this court was held on 8 November 1994. On 27 October 1995 the charge against the applicants was changed and the proceedings discontinued as being time-barred. Upon the Public Prosecutor's appeal, the Naples Court of Appeal on 21 October 1997 acquitted the applicants on the ground that the facts of the case did not constitute an offence.

AS TO THE LAW

Application No. 41327/98

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 30,000,000 ITL to Mr Domenico Silvestri with a view to securing a friendly settlement of the application registered under No. 41327/98. This sum shall cover any pecuniary and non-pecuniary damage (25,000,000 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 14 September 1999, the Court received the following declaration, signed by the first applicant’s representative:

“I note that the Government of Italy are prepared to pay 30,000,000 ITL (25,000,000 ITL for any pecuniary and non-pecuniary damage and 5,000,000 ITL for legal costs) to Mr Domenico Silvestri with a view to securing a friendly settlement of application No. 41327/98 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. 41328/98

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

“I declare that the Government of Italy offer to pay 30,000,000 ITL to Mrs Maria Cifariello with a view to securing a friendly settlement of the application registered under No. 41328/98. This sum shall cover any pecuniary and non-pecuniary damage (25,000,000 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.”

11. On 6 September 1999, the Court received the following declaration, signed by the second applicant's representative:

"I note that the Government of Italy are prepared to pay 30,000,000 ITL (25,000,000 ITL for any pecuniary and non-pecuniary damage and 5,000,000 ITL for legal costs) to Mrs Maria Cifariello with a view to securing a friendly settlement of application No. 41328/98 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. 41329/98

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

"I declare that the Government of Italy offer to pay 30,000,000 ITL to Mrs Angela Maria Sannino with a view to securing a friendly settlement of the application registered under No. 41329/98. This sum shall cover any pecuniary and non-pecuniary damage (25,000,000 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."

13. On 10 September 1999, the Court received the following declaration, signed by the third applicant's representative:

"I note that the Government of Italy are prepared to pay 30,000,000 ITL (25,000,000 ITL for any pecuniary and non-pecuniary damage and 5,000,000 ITL for legal costs) to Mrs Angela Maria Sannino with a view to securing a friendly settlement of application No. 41329/98 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. 41560/98

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

“I declare that the Government of Italy offer to pay 56,000,000 ITL to Mr Costantino Ruocco and to Mrs Nicoletta Cozzolino with a view to securing a friendly settlement of the application registered under No. 41560/98. This sum shall cover any pecuniary and non-pecuniary damage (25,000,000 ITL for each applicant) as well as legal costs (6,000,000 ITL for both applicants), 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.”

15. On 10 September 1999, the Court received the following declaration, signed by the fourth and fifth applicants’ representatives:

“We note that the Government of Italy are prepared to pay 56,000,000 ITL (25,000,000 ITL for any pecuniary and non-pecuniary damage for each applicant and 6,000,000 ITL for legal costs for both applicants) to Mr Costantino Ruocco and Mrs Nicoletta Cozzolino with a view to securing a friendly settlement of application No. 41560/98 pending before the Court.

We accept the proposal and waive any further claims in respect of Italy relating to the facts of this application. We 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.

We 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.”

16. 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).

17. 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

Marc FISCHBACH
President