



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

SECOND SECTION

CASE OF MASTROENI v. ITALY

(Application no. 41041/98)

JUDGMENT

STRASBOURG

14 December 1999

In the case of Mastroeni v. Italy,

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

Mr C. 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 2 December 1999,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 41041/98) against Italy lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mr Ugo Mastroeni (“the applicant”), on 14 April 1998. The applicant is represented by Mr Nino Muscolino, a lawyer practising in Messina (Italy). The Italian Government (“the Government”) are represented by their Agent, Mr U. Leanza.

2. 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.

3. 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)).

4. The applicant complained under Article 6 § 1 of the Convention about the length of a set of criminal proceedings. On 1 December 1998 the Court (Second Section) 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 February 1999, to which the applicant replied on 24 March 1999.

5. On 15 June 1999 the Court declared the application admissible.

6. On 11 October 1999, after an exchange of correspondence, the Section Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 22 October 1999 and on 4 November 1999 the applicant's representative and the Agent of the Government respectively submitted formal declarations accepting a friendly settlement of the case.

AS TO THE FACTS

7. On 27 November 1982 the tax division of the Messina police started investigations into the bankruptcy of C.C., with whom the applicant had business relations. On 13 June 1983 the applicant was interrogated, as a witness. On 27 June 1983 the tax division of the Messina police submitted a report to the preliminary investigations office attached to the Messina District Court on the outcome of the investigations.

8. On 12 March 1985 the tax division carried out a fiscal inspection of the applicant's accounts. On 22 April 1987 the applicant was summoned to appear before the judge for preliminary investigations. He was charged with fraud and committed for trial before the Messina District Court. On 29 October 1997 the District Court ruled that the proceedings against the applicant be discontinued, the offence being time-barred. The decision was served on the applicant on 7 January 1998 and it became final on 22 January 1998.

AS TO THE LAW

9. On 5 November 1999 the Court received the following declaration from the Government:

"I declare that the Government of Italy offer to pay 39,000,000 ITL to Mr Ugo Mastroeni with a view to securing a friendly settlement of the application registered under No. 41041/98. This sum shall cover any pecuniary and non-pecuniary damage (34,000,000 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.

The Government further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention."

10. On 4 November 1999 the Court received from the applicant's representative the following declaration signed by the applicant:

"I note that the Government of Italy are prepared to pay 39,000,000 ITL (34,000,000 ITL for pecuniary and non-pecuniary damage and 5,000,000 ITL for legal costs) to Mr Ugo Mastroeni with a view to securing a friendly settlement of application No. 41041/98 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."

11. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). 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).

12. 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 rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 14 December 1999, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President