



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

SECOND SECTION

CASE OF PENNA v. ITALY

(Application no. 35168/97)

JUDGMENT

STRASBOURG

14 December 1999

In the case of Penna 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 2 December 1999,

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

PROCEDURE

1. The case originated in an application (no. 35168/97) 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 Benito Penna (“the applicant”), on 13 February 1997. The applicant is represented by Mr D. Callea, a lawyer practising in Reggio Calabria. 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 16 April 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 17 July 1998. The applicant did not reply to these observations.

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 2 February 1999 the Court declared the application 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 18 and 22 October 1999 respectively the Agent of the Government and the applicant's representative submitted formal declarations accepting a friendly settlement of the case.

AS TO THE FACTS

7. On 28 August 1990 the Italian police seized a cottage belonging to the applicant. On 12 February 1991 the Public Prosecutor committed the applicant and one Mr F. for trial, commencing on 6 May 1991 before the Reggio Calabria Magistrate. The applicant and his co-accused were charged with a number of offences concerning the fact of having built the said cottage without the prescribed building permit. In a judgment of 28 June 1991, the Reggio Calabria Magistrate held that the charges brought against Mr F. and some of those brought against the applicant were time-barred and sentenced the latter to eight months' imprisonment and to a fine of 60,000,000 lire in respect of the remainder of the charges. On 29 July 1991 the applicant lodged an appeal with the Reggio Calabria Court of Appeal, requesting that all the charges brought against him be declared time-barred or, in the alternative, that the penalty imposed on him be reduced. In a judgment of 7 October 1996, filed with the registry on 10 October 1996, the Reggio Calabria Court of Appeal held that all the charges against the applicant were time-barred.

AS TO THE LAW

8. On 19 October 1999 the Court received the following declaration by the Italian Government:

"I declare that the Government of Italy offer to pay 6,000,000 lire to Mr Benito Penna with a view to securing a friendly settlement of the application registered under no. 35168/97. This sum shall cover any pecuniary and 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 Government further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention."

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

"I note that the Government of Italy are prepared to pay 6,000,000 lire (covering both pecuniary and non-pecuniary damage and legal costs) to Mr Benito Penna with a view to securing a friendly settlement of application no. 35168/97 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 (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).

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 notified in writing on 14 December 1999, according to Rule 77 §§ 2 et 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President