



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

SECOND SECTION

CASE OF MARTINELLI v. ITALY

(Application no. 33827/96)

JUDGMENT

STRASBOURG

11 January 2000

In the case of Martinelli 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 16 December 1999,

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

PROCEDURE

1. The case originated in an application (no. 33827/96) 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 Giancarlo Martinelli (“the applicant”), on 5 November 1996. The applicant is represented by Mr Marco della Luna, a lawyer practising in Mantova (Italy). The Italian Government (“the Government”) are represented by their Agent, Mr Umberto Leanza.

2. The applicant complained under Article 6 § 1 of the Convention about the length of a set of criminal proceedings. On 29 September 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. It declared the remainder of the application inadmissible.

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. The Government submitted their observations on 1 December 1998. On 13 April 1999, the applicant informed the Court that he did not intend to present any submissions.

5. 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)).

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

7. 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 4 November 1999 and on 2 December 1999 the Agent of the Government and the applicant's representative respectively submitted formal declarations accepting a friendly settlement of the case.

AS TO THE FACTS

8. On 20 June 1991 the applicant was questioned by the investigative police under suspicion of having committed certain fiscal offences. On 24 February 1995 he was committed for trial before the District Court of Modena. By a judgment of 6 May 1996, this court partially acquitted him. Appeal proceedings are currently pending before the Court of Appeal of Bologna.

AS TO THE LAW

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

"I declare that the Government of Italy offer to pay 25,000,000 ITL to Mr Giancarlo Martinelli with a view to securing a friendly settlement of the application registered under No. 33827/96. This sum shall cover any pecuniary and non-pecuniary damage (20,000,000 ITL) as well as legal costs (5,000,000 TL), 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 2 December 1999 the Court received the following declaration signed by the applicant's representative:

“ I note that the Government of Italy are prepared to pay 25,000,000 ITL (20,000,000 ITL for pecuniary and non-pecuniary damage and 5,000,000 ITL for legal costs) to Mr Giancarlo Martinelli with a view to securing a friendly settlement of application No. 33827/96 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 11 January 2000 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President