



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

SECOND SECTION

CASE OF GELLI v. ITALY

(Application no. 37752/97)

JUDGMENT

STRASBOURG

19 October 1999

FINAL

31/01/2000

In the case of Gelli v. Italy,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), as amended by Protocol No. 11, and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr M. FISCHBACH, *President*,
Mr B. CONFORTI,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A.B. BAKA, *Judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 7 October 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application 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 Licio Gelli (“the applicant”), on 14 July 1997. The application was registered on 11 September 1997 under file no. 37752/97. The applicant is represented by Mr Michele Gentiloni Silverj, a lawyer practising in Rome. The Italian Government are represented by their Agent, Mr U. Leanza.

2. The applicant complained that, contrary to Article 6 § 1 of the Convention, the criminal proceedings brought against him had not been heard within a reasonable time.

3. On 20 May 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 4 September 1998, to which the applicant replied on 20 October 1998.

4. 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.

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 G. Bonello, Mrs V. Strážnická, Mr P. 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.

6. On 15 December 1998, the Chamber declared the application admissible¹.

7. At the Court's request, the applicant and the Government submitted further information on 4 March and 5 March 1999 respectively.

AS TO THE FACTS

8. The applicant is an Italian citizen currently residing in Santa Maria delle Grazie, Arezzo.

9. In 1981 the Investigating Office attached to the Milan District Court in the course of investigations concerning the bankruptcy of the private bank Banco Ambrosiano seized certain material relating to the Masonic lodge called "Propaganda 2 - P2".

10. The applicant was suspected *inter alia* of association aiming at political conspiracy, seeking and obtaining classified information, false pretences, espionage, fraud, aggravated slander and extortion, forgery in public deeds.

11. The investigations concerned 40 co-accused and 17 charges.

12. On 20 January 1982, 11 June 1982 and 15 September 1982 warrants of arrest were issued against the applicant by the Investigating Judge attached to the Rome District Court for aggravated slander, fraud and false pretences respectively. At the time, the applicant resided in Switzerland.

13. On 2 September 1982 the Italian authorities requested the Swiss authorities to extradite the applicant to Italy in connection with the charges of aggravated slander, fraud and false pretences.

14. On 13 September 1982 the applicant was arrested in Switzerland and detained with a view to extradition.

15. On 17 September 1982 an order of arrest was issued against the applicant by the Office of the Public Prosecutor attached to the Milan District Court for fraudulent bankruptcy in relation to the Banco Ambrosiano.

¹ The text of the Court's decision is obtainable from the Registry.

16. On 1 June 1983 the Investigating Judge attached to the Milan District Court issued a warrant of arrest against the applicant for fraudulent bankruptcy.

17. On 5 July 1983 the Italian authorities further requested the Swiss authorities to extradite the applicant in connection with the charge of fraudulent bankruptcy.

18. On 19 August 1983 the Swiss Federal Court granted the request of the Italian authorities for the applicant's extradition in relation to all the charges.

19. The applicant, however, had escaped from Champ-Dollon prison, where he had been detained, on 10 August 1983.

20. The question of the territorial competence to decide the case was brought before the Rome Court of Appeal, which by judgment of 26 March 1985 ruled that the Rome District Court was competent.

21. On 21 September 1987 the applicant was again arrested in Switzerland and was extradited to Italy on 17 February 1988 pursuant to a decision taken by the Swiss Federal Department of Justice on 19 October 1987.

22. In March 1988 the applicant was placed under house arrest.

23. By a judgment decision of 18 November 1991, filed with the Registry on 19 November 1991, the Investigating Judge attached to the Rome District Court *inter alia* committed seventeen co-accused for trial on a charge of political conspiracy. The applicant was committed for trial on charges of false pretences, corruption, aggravated slander and seeking and obtaining classified information. The charges of political conspiracy, espionage and extortion were dropped, the applicant having not been extradited in relation to them, and the charge of forgery in public deeds was dropped by application of an amnesty. The judgment consisted of 269 pages.

24. The first hearing was held on 12 October 1992. Further hearings were held on 22 and 28 October 1992, 3, 4, 5, 11, 12 and 18 November 1992, 2 and 3 December 1992, 12, 13, 14, 25, 27, 28 and 29 January 1993, 11, 12 (postponed due to a lawyers' strike), 15, 17 and 22 February 1993, 1, 3 (postponed due to a lawyers' strike), 4, 15, 17, 18, 23, 24, 29 and 31 March 1993, 2, 4, 6, 7, 14, 15, 16, 21 and 22 April 1993, 5, 6, 13, 15, 17, 19 and 31 May 1993, 7, 8 and 10 June 1993, 27, 29 and 30 September 1993, 4, 5, 6, 8, 12, 18, 19 and 22 October 1993, 3, 4, 5, 9, 12, 18, 19, 22, 29 and 30 November 1993, 1, 6, 7, 10, 15 and 17 December 1993, 17, 25, 27 and 31 January 1994, 1 and 2 February 1994. The Court questioned 159 witnesses.

25. The pleadings started on 2 February 1994 and continued until 8 April 1994 (sixteen hearings).

26. On 16 April 1994 the Assize Court of Rome *inter alia* found the applicant guilty of false pretences, aggravated slander and seeking and

obtaining classified information and sentenced him to seventeen years' imprisonment, of which five years and the payment of the fine were pardoned. The judgment consisted of 1, 813 pages.

27. On 30 April 1994 the applicant lodged an appeal against the said judgment with the Rome Assize Court of Appeal. The Public Prosecutor also appealed.

28. Both the Public Prosecutor and the applicant filed the grounds for the appeal with the Registry on 3 October 1994.

29. The case-file reached the Assize Court of Appeal of Rome on 23 December 1994.

30. In the preliminary phase, the court ruled that the proceedings against four deceased co-accused be discontinued and dismissed the appeal lodged by the Public Prosecutor in respect of certain co-accused including the applicant, on the ground that he had failed to file the grounds for the appeal.

31. The trial was set for 5 July 1995 but was adjourned until 17 January 1996, as the lawyers were on strike. By a decision of 17 January 1996 the court dismissed the parties' request for further evidence.

32. Further hearings were held on 23 January, 13, 15, 20, 22 and 27 March 1996.

33. By a judgment consisting of 188 pages, delivered on 27 March 1996 and filed with the Registry on 15 May 1996, the Assize Court of Appeal of Rome upheld the previous judgment.

34. On 28 March and 30 March 1996, the applicant and his counsel respectively lodged appeals on points of law.

35. By a judgment of 20 November 1996, the Court of Cassation ruled that the charges of false pretences and slander against the applicant be dropped as time-barred. It confirmed the remainder of the judgment and accordingly reduced the sentence. The judgment was filed with the Registry on 24 December 1996.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicant complained of the length of the criminal proceedings instituted against him. He alleged a violation of Article 6 § 1 of the Convention, which provides:

“In the determination ... of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Period to be taken into consideration

37. The proceedings began at the latest on 13 September 1982, when the applicant was arrested (see paragraph 14 above; see also the Wemhoff v. Germany judgment of 27 June 1968, Series A no. 7, p. 26, § 19) and ended on 24 December 1996, when the final judgment was filed with the court registry (see paragraph 35 above).

38. The Court observes however that the applicant escaped from prison on 10 August 1983 and absconded until 21 September 1987, when he was arrested again. The Court recalls in this respect that when an accused person flees from a state which respects the principle of the rule of law, it can be assumed that he is not entitled to complain of the unreasonable duration of the proceedings following his flight, unless he can show sufficient reason to rebut this assumption (see Eur. Comm. HR, No. 7438/76, Ventura v. Italy, Report of the Commission, 15 December 1980, D.R. 23, pp. 59-60 §. 197; No. 21068/92, dec. 17/01/96, unpublished). In the present case, the applicant failed to do so, and in particular he failed to prove that his absconding did not have any prejudicial impact on the length of the proceedings *in absentia*; it follows that the four years and one month during which the applicant absconded should not be counted towards the length of the proceedings at issue.

39. The Court accordingly considers that the period to be taken into consideration lasted approximately ten years and two months for three levels of jurisdiction.

B. Reasonableness of the length of the proceedings

40. According to the Court's case-law, the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (see, among other authorities, the Pélissier et Sassi v. France judgment of 25 March 1999, to be published in the Court's official reports, § 67, and the Ledonne v. Italy (no. 1) judgment of 12 May 1999, § 21).

41. The Government argue that the proceedings at issue were extremely complex by reason of the number of co-accused, the nature of the charges involved and the subsequent complexity of the investigations. The Government point out that the right of an accused to be tried within a reasonable time must be weighed against the need to establish the truth. The Government maintain that the present proceedings, like those referred to as "maxi-processi", involved a number of interrelated charges, which demanded to be treated jointly. They underline that the domestic courts were called to examine a massive amount of documents and numerous

witnesses and that, nevertheless, no significant delays can be identified which could be imputed to the domestic authorities. Accordingly, the Government consider that the length of the proceedings at issue did not infringe Article 6 § 1 of the Convention.

42. The applicant contests the Government's arguments and alleges that the proceedings concerned a simple charge of slander, which did not need to be examined together with all the other complex charges referred to in the Government's observations. Furthermore, the applicant considers that the point at issue was an exclusively legal one, for which no investigation would have been required. He concludes that the length of the proceedings was unreasonable.

43. The Court observes at the outset that, as the Government rightly point out, the proceedings at issue were extremely complex; while it may be true that the investigations did not mainly concern the charge of slander, i.e. the one in relation to which the applicant has lodged this application, the Court underlines that the proceedings in relation to this charge have never been severed from the remainder. Nor is it for the Court to say whether they should have (see Eur. Com. HR, No. 35757/97, *Brusamolino v. Italy*, dec. 27 April 1999, unpublished).

44. The Court has not identified any delay in the proceedings, which is attributable to the applicant's conduct, saving for the period of four years and one month during which the applicant absconded from prison, which at any event has not been counted towards the period to be taken into consideration (see paragraph 38 above).

45. As regards the conduct of the State authorities, the Court notes that there appears to have been a very long delay between the decision of 26 March 1985 whereby the Rome District Court was found to be competent to deal with the case, and the judgment of the Judge for the Preliminary Investigations on committals for trial on 18 November 1991. The Government did not provide any explanation for this delay.

46. The Court considers that this delay, which covers more than half of the total length of the period under consideration, is of itself sufficient to conclude that the case was not heard within a "reasonable time". There has accordingly been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary and pecuniary damage

48. In respect of non-pecuniary and pecuniary damage, the applicant sought the sum of 200,000,000 Italian lire (ITL).

49. The Government submitted that there was no causal link between the alleged violation of the Convention and the alleged damage and asked the Court to rule that a finding of a violation constituted sufficient just satisfaction.

50. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the criminal proceedings against him. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant 20,000,000 ITL as compensation for non-pecuniary damage.

B. Costs and expenses

51. The applicant also claimed reimbursement of legal costs and expenses incurred in the preparation of his case, which he put at 10,000,000 ITL.

52. The Government left the matter to be assessed by the Court in an equitable manner.

53. According to the Court's established case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. However, the Court notes that the applicant did not submit details of any costs incurred. Accordingly, and taking into account the simplicity of the case, the Court decides to award 2,000,000 ITL.

C. Default interest

54. According to the information available to the Court, the statutory rate of interest applicable in Italy at the time of adoption of the present judgment is 2.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final under Article 44 § 2 of the Convention, the following sums:

- (i) 20,000,000 (twenty millions) ITL for non-pecuniary damage;
 - (ii) 2,000,000 (two millions) ITL for costs and expenses, together with any value-added tax that may be chargeable;
 - (b) that simple interest at an annual rate of 2,5% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* unanimously the remainder of the applicant's claims for just satisfaction.

Done in English, then sent as a certified copy on 19 October 1999, according to Article 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Marc FISCHBACH
President