



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

SECOND SECTION

CASE OF STEFANELLI v. SAN MARINO

(Application no. 35396/97)

JUDGMENT

STRASBOURG

8 February 2000

FINAL

08/05/2000

In the case of Stefanelli v. San Marino,

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

Mr C.L. ROZAKIS, *President*,

Mr M. FISCHBACH,

Mr L. FERRARI BRAVO,

Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,

Mr A.B. BAKA,

Mr E. LEVITS, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 27 January 2000,

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

PROCEDURE

1. The case originated in an application (no. 35396/97) against the Republic of San Marino 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 a San Marinense national, Mrs Sylviane Stefanelli (“the applicant”), on 13 January 1997. The applicant was represented by Mr A. Selva, a lawyer practising in San Marino, and the San Marinense Government (“the Government”) were represented by their co-Agent, Mr G. Ceccoli.

The applicant complained under Article 6 §§ 1 and 3 of the Convention of the unfairness of criminal proceedings that had been brought against her on the grounds that the preparatory stages of the proceedings at both first instance and on appeal had been directed by the same person, the public prosecutor had not been appointed in accordance with domestic law and there had been no public hearing either at first instance or on appeal.

2. On 21 October 1998 the Commission (First Chamber) decided to give notice of the application to the Government and to invite them to submit observations in writing on its admissibility and merits.

3. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with Article 5 § 2 thereof, the application was examined by the Court.

The Government submitted their observations on 12 February 1999 and the applicant replied on 15 March 1999.

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 that Section included *ex officio* Mr L. Ferrari

Bravo, the judge elected in respect of San Marino (Article 27 § 2 of the Convention and Rule 26 § 1 (a)), and Mr C.L. Rozakis, 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 A.B. Baka and Mr E. Levits (Rule 26 § 1 (b)).

5. On 1 June 1999 the Chamber declared the application admissible as regards the lack of a public hearing at first instance and on appeal and inadmissible as to the remainder¹.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is a San Marinese national. She was born in 1950 and lives in the Republic of San Marino. She works as a clerk.

7. On 24 February 1992 the public prosecutor's office in Bologna (Italy) sent letters rogatory to the San Marino Court requesting it to carry out a search at the applicant's office. She was suspected of offences connected with the illegal sale of milk for zootechnical use.

8. The San Marinese judicial authority decided to start its own investigations and the task of making the inquiries was assigned to an investigating judge (*Commissario della Legge*), E. On 28 February 1992 the applicant was questioned and arrested.

9. On 2 April 1993 the Council of the XII appointed Mrs Z. as the public prosecutor (public prosecutor's office). As she was unable to perform her duties owing to a conflict of interest she was replaced on 15 April 1993 by Mr S. The applicant maintained that the public prosecutor should have been appointed by the General Grand Council and not by the Council of the XII.

10. On 15 December 1993 the investigating judge preferred final charges. After the witnesses had given evidence and the defence lawyers lodged their memorials, the case file was sent to Mr G., a first-instance judge. Public hearings at which witnesses gave evidence before the investigating judge were held on 19, 20 and 25 April and 3 and 4 May 1994.

11. On 19 June 1996 the first-instance judge delivered his verdict without holding a public hearing and in the accused's absence. He sentenced her to four years and six months' imprisonment. He also ruled that she was dangerous and imposed a court supervision order as a security measure.

1. *Note by the Registry.* The Court's decision is obtainable from the Registry.

12. The applicant appealed and lodged her grounds of appeal on 12 August 1996. The preparatory stage of the appeal was conducted by the same investigating judge, E., who had led the investigation at first instance.

13. On 17 September 1996 the applicant lodged a complaint alleging a violation of fundamental principles of domestic law and of the European Convention on Human Rights. On 26 September she lodged a memorial.

14. On 31 October 1996 Mr N., a criminal appeal court judge (*Giudice delle Appellazioni penali*), delivered the final judgment of the court of appeal, which was made public on 18 November 1996. In his decision, he rejected the allegation of a violation of fundamental principles on the ground that the legislation in issue had been amended in November 1992 and it was for the legislature to decide whether or not the reform applied to pending proceedings or, as it in fact decided, only to new proceedings. The judge upheld the conviction on the merits but reduced the sentence to three years' imprisonment. He also quashed the declaration that the applicant was dangerous and the security measure.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. Since Law no. 83 of 28 October 1992 on the reorganisation of the judicial bodies came into force, criminal proceedings have been governed by new rules. However, the 1992 statute makes no change to the former rules governing the holding of hearings.

THE LAW

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

16. The applicant complained of the lack of a public hearing before the trial courts at first instance and on appeal. She 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 ... public hearing ... by [a] ... tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

The applicant noted that the courts of first instance and of appeal had not been able to hold a public hearing when examining her case and, consequently, had delivered their verdicts after a written procedure and

without hearing her. In addition, since the case had been dealt with under the ordinary procedure in force until the reform of 28 October 1992 (see paragraph 15 above), she had had no possibility of asking the trial court to hold a public hearing or to repeat steps taken at the investigative stage. The applicant further pointed out that under San Marinese law the appellate court could re-examine all aspects of the case and, if the appeal was lodged by the public prosecutor's office, increase the sentence.

17. The Government observed that, even at the material time, San Marinese law provided for a public hearing at first instance for the witnesses to give evidence and afforded the accused a right to examine them at the hearing, which was held before the investigating judge.

As to the procedure on appeal, after referring to the "necessity" of applying the Article 6 guarantees to appellate proceedings also, the Government said that the absence of a public hearing on appeal could be justified by special considerations that explained why appellants were denied a hearing. The Government relied in its submissions on the Jan-Åke Andersson and Fejde v. Sweden judgments (29 October 1991, Series A nos. 212-B and 212-C). As to the instant case, the Government submitted that the applicant's lawyer could have asked for him and his client to be allowed to attend before the appellate court and for a further hearing of the witnesses. Accordingly, the Court was precluded from concluding that there had been a violation of the principle that proceedings must be adversarial as the applicant had not requested a hearing and had implicitly waived her right to one. Consequently, the procedure on appeal had been fair even though San Marinese law did not provide for a public hearing.

In conclusion, there had been no violation of Article 6 § 1 of the Convention.

18. Having heard the parties' submissions, the Court considers it helpful to make clear that in the instant case its task is simply to verify whether the Government guaranteed the applicant the right to have her case examined at a public hearing.

19. The Court reiterates that it is a fundamental principle enshrined in Article 6 § 1 that court hearings should be held in public. This public character protects litigants against the administration of justice without public scrutiny; it is also one of the means whereby people's confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the principles of any democratic society (see, as the most recent authority, *Serre v. France*, no. 29718/96, § 21, 29 September 1999, unreported).

20. In the instant case, the hearings at which evidence was taken from the witnesses were held at first instance and, as the Government indicated, could also have been held on appeal if the applicant had so requested. Nevertheless, the Court observes that the oral procedure would not have

taken place before the judge called upon to decide the case (Mr G. at first instance and Mr N. on appeal – see paragraphs 10 and 14 above) but before the investigating judge, E. (see paragraphs 10 and 12 above), whose only role was to investigate the case. The proceedings before the trial judge took place without a public hearing either at first instance or on appeal.

21. Although the Government did not rely on this provision, the Court points out that under the second sentence of Article 6 § 1 the press and public may, in certain circumstances, be excluded from the trial. The Court notes that the fact that no hearing was held did not result from a decision by the judge but from the application of the law in force. However, having regard to the facts of the case and the applicant's alleged omissions, the Court is of the opinion that none of the sets of circumstances set out in that provision was applicable.

22. Accordingly, the Court holds that there has been a violation of Article 6 § 1 of the Convention in that the applicant's case was not heard in public by the trial and appellate courts.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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. Damage

24. The applicant claimed 25,000 euros (EUR) for non-pecuniary damage arising out of the alleged violation of Article 6 § 1 of the Convention.

25. The Government did not make any observations.

26. The Court finds that the applicant undoubtedly sustained non-pecuniary damage. Having regard to the circumstances of the case, it decides to award her 10,000,000 Italian lire (ITL) under this head.

B. Costs and expenses

27. The applicant also sought EUR 25,000 for the costs she had incurred in the proceedings before the Commission and the Court.

28. The Government did not submit any observations.

29. The Court reiterates that an applicant may recover his costs and expenses only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see *Bottazzi v. Italy* [GC], no. 34884/97,

§ 30, ECHR 1999-V). In the instant case, having regard to the evidence before it and the aforementioned criteria, the Court considers reasonable the sum of ITL 9,000,000 for costs and expenses.

C. Default interest

30. According to the information available to the Court, the statutory rate of interest applicable in the instant case at the date 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 according to Article 44 § 2 of the Convention, ITL 10,000,000 (ten million Italian lire) for non-pecuniary damage and ITL 9,000,000 (nine million Italian lire) for costs and expenses;
 - (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* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 8 February 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President