CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF AMBRUOSI v. ITALY

(Application no. 31227/96)

JUDGMENT

STRASBOURG

19 October 2000

FINAL

19/01/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.It is subject to editorial revision before its reproduction in final form.

In the case of Ambruosi v. Italy,

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

Mr C. L. ROZAKIS, *President*,
Mr A. B. BAKA,
Mr B. CONFORTI,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 28 September 2000,

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

PROCEDURE

1. The case originated in an application (no. 31227/96) 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, Ms Virginia Ambruosi ("the applicant"), on 4 April 1996.

2. The applicant was represented by Mr Ascanio Amenduni, a lawyer practising in Bari (Italy). The Italian Government ("the Government") were represented by their Agent, Mr Umberto Leanza, and by their co-Agent, Mr Vitaliano Esposito.

3. The applicant alleged, in particular, that the termination through a Law Decree of a number of civil actions and the offsetting of the relevant legal costs had violated her right to the peaceful enjoyment of her possessions.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 3 February 2000, the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. By judgments nos. 495 of 31 December 1993 and 240 of 10 June 1994 the Constitutional Court ruled that the State should reimburse part of the taxes unduly paid by certain categories of pensioners on their old-age pensions.

8. The implementation of these judgments through legislative measures having not taken place immediately, a number of pensioners falling within these categories instituted proceedings against the State before the Italian Magistrate's courts seeking the reimbursement in question. The applicant acted as counsel for fifty-three such pensioners. In certain cases, she requested a direct discharge of her fees, costs and expenses.

9. By judgments Nos. 3295 of 22 November 1995, 3491 of 4 December 1995, 3501 of 4 December 1995, 3504 of 4 December 1995, 3505 of 4 December 1995, 3506 of 4 December 1995, 3510 of 4 December 1995, 681 of 5 February 1996 and 1898 of 27 March 1996, the Trani Magistrate found in the plaintiffs' favour and discharged the applicant's fees, costs and expenses directly to her. The total amount of the discharged fees in relation to these judgments was 12,900,000 ITL.

10. On 28 March 1996 the President of the Republic passed Law Decree No. 166 aiming at the enforcement of the judgments of the Constitutional Court, whereby it was decided that the State would reimburse the due amounts by way of distribution of State bonds to the relevant pensioners over a period of six years.

11. Paragraph 3 of Section 1 of this Law Decree extinguished all pending proceedings concerning the reimbursement in question and provided that the legal costs would be considered as offset between the parties. It further provided that the judicial decisions which, on the day of entry into force of the decree, had not yet become final would produce no legal effects.

12. The judgments listed in paragraph 9 above, having not become final, were thus deprived of all legal effects. The other proceedings which were still pending were extinguished and the legal costs offset *ex lege*.

II. RELEVANT DOMESTIC LAW

13. Under Section 91 of the code of civil procedure, the unsuccessful party in the proceedings bears all the legal costs, including the lawyer's fees, costs and expenses incurred by the other party or parties.

14. Under Section 92, the judge can offset the legal costs between the parties when neither is entirely successful or when there are other equitable grounds therefor ("*altri giusti motivi"*).

15. Under Section 93 of the code of civil procedure, a lawyer whose client is of poor means can declare to have advanced the costs and expenses of the proceedings on behalf of his client and not to have been paid his fees (*onorari*), and can accordingly request that, if his client is successful and is thus entitled under Section 91 to be awarded legal costs, the court discharge the latter directly to the lawyer (*distrazione delle spese*) (see, for example, Cassazione Civile, judgment No. 670 of 30.03.62). Section 93 thus grants a special protection to the lawyer, who enters into a direct relationship with the opposite party and obtains an autonomous title. He can subsequently autonomously act against the losing party in order to recover his fees, costs and expenses. The lawyer's right to claim his fees from his client, however, persists (see, for example, Cassazione Civile, judgments No. 5467 of 13.05.93 and No. 865 of 12.02.82).

16. Law Decree No. 166/1996 was never converted into a Law, but its effects were maintained by Section 1 § 6 of Law No. 608 of 20 November 1996.

17. The question of the compatibility of Paragraph 3 of Section 1 of Law Decree No. 166/1996 with Articles 1 § 1 (recognition of the importance of work), 4 and 35 (protection of the right to work), and 36 (right to payment for one's work) of the Italian Constitution was raised before the Constitutional Court by the Brescia Magistrate on 1 April and 23 April 1996. By a decision (No. 165) of 29 April 1999, the Constitutional Court referred the matter back before the Brescia Magistrate, seeking that he examine it again in the light of the subsequent Law No. 448 of 23 December 1998 (which reiterated *inter alia* that the judicial decisions which, on the day of entry into force of the Law Decree, had not yet become final would produce no legal effects).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

18. The applicant complains that she was deprived of her right to the payment of her fees, costs and expenses in connection with the proceedings terminated by Law Decree No. 166/96. She invokes Article 1 of Protocol No. 1 to the Convention, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

19. The applicant's complaint raises issues which are different depending on whether or not, in the proceedings in which she was involved on the date of entry into force of the Law Decree, she had requested the direct discharge of her fees. The Court will examine the different situations separately.

A. Lawsuits in which the applicant had requested the direct discharge of her fees

1. Whether there was a possession

20. The Court recalls that future income constitutes a "possession" within the meaning of Article 1 of Protocol No. 1 only if it has been earned or where an enforceable claim to it exists (see Eur. Comm. HR, no. 19819/92, dec. 5/7/94, D. R. 78, p. 88).

a) Lawsuits which had ended at first instance and in which the applicant had obtained rulings in her favour

21. In the lawsuits which ended by the judgments listed in paragraph 9 above, the magistrate had awarded fees and legal costs directly to the applicant, for a global sum of approximately 13,000,000 Italian lire. The applicant had "earned" this sum according to the existing regulations on lawyers' fees, so that it constituted a "possession" within the meaning of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, Eur. Comm. H.R., No. 8410/78, dec. 13.12.79, D.R. 18, pp. 216, 219). The Government concede it *a contrario* in their observations (see paragraph 23 below).

b) Lawsuits which were still pending

22. The applicant argues that the State interfered with the enjoyment of her "possessions", because she had been acting in the proceedings on behalf on her clients and had requested that in case of success legal costs be discharged directly to her; that the State would lose in the proceedings was undoubted, which is confirmed by the fact that the Government issued Law Decree no. 166/96: according to the applicable legislation and case-law,

therefore, she would have an autonomous right to claim the payment of her fees from the State.

23. The Government argue that there was no "possession" within the meaning of Article 1 of Protocol No. 1, given that no judgment awarding legal costs had been issued yet. Accordingly, in their opinion the applicant cannot claim to be a victim of this provision.

24. The Court recalls that under the existing regulations on the lawyers' fees, a lawyer's client is liable for the fees for each act carried out by the lawyer on his behalf. At the time when Law Decree no. 166/96 was issued, the applicant had carried out a number of acts on behalf of her clients in the various sets of proceedings, and therefore had a claim for her fees in respect of her clients. She thus had a "possession" within the meaning of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, Eur. Comm. H. R., No. 8410/78, dec. 13.12.79, D.R. 18, pp. 216, 219).

2. The applicable rule

25. Under the Court's case-law, Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules (see the James and Others v. the United Kingdom judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37). The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (*Immobiliare Saffi v. Italy* [GC], No. 22774/93, § 44, ECHR 1999-V).

26. In the present case, as regards the proceedings which had already ended at first instance, by application of paragraph 3 of Section 1 of Law Decree No. 166 of 1996 the judgments listed in paragraph 9 above which had not become final and enforceable yet, were deprived of their legal effects (see paragraphs 11 *in fine* and 12 above); as regards the proceedings which were still pending, the legal costs and fees were considered as offset between the parties (see paragraph 11 above). Nevertheless, the applicant's right to claim her legal fees and costs from her clients persisted (see paragraph 15 above *in fine*): the applicant only lost her right under Section 93 of the Code of Civil Procedure to claim those sums directly from the State (see paragraph 15 above).

27. In the light of the foregoing, the Court takes the view that the deprivation of legal effects and the offsetting in question did not amount to a deprivation of property within the meaning of the second sentence of the

first paragraph, but rather to an interference with the applicant's right to the peaceful enjoyment of her possessions within the meaning of the first sentence of the first paragraph of Article 1.

3. Whether the interference was justified

a) Aim of the interference

28. The Government have not indicated what aim they had pursued by enacting Paragraph 3 of Section 1 of the Law Decree in question. The Court however can gather from the elements of the case that the aim of the offsetting of legal costs was to protect the public purse from the relevant expenditure. The Court is satisfied that the interference at issue was "in the public interest" within the meaning of Article 1 of Protocol No. 1.

b) Proportionality of the interference

29. The Government maintain that the loss of earnings which the applicant suffered is the consequence of her own free choice not to claim her fees from her clients.

30. The applicant argues that such a request, after agreeing with her clients that she would not seek any payment from them but would seek direct discharge of her fees, would have been contrary to her professional ethics. Furthermore, these clients were of poor means, and they would probably not be in the position of paying.

31. The Court recalls that an interference with an individual's rights under Article 1 of Protocol No. 1 must strike a "fair balance" between the demands of the general interest and the requirements of the protection of the individual's fundamental rights (see *Beyeler v. Italy* [GC], No. 33202/96, § 107, ECHR 2000-). There must be a reasonable relationship of proportionality between the means employed and the aim pursued.

32. In the present case, the interference consisted in depriving the applicant of the possibility under Section 93 of the Code of Civil Procedure of seeking the payment of her legal costs and fees directly from the State rather than from her clients, who were of poor means and had passed an agreement with her that, in case of success, they would not have to bear any legal costs. The applicant had obtained a number of rulings in her favour which she could not enforce; further, she was not awarded legal costs in other pending proceedings, despite the fact that she had a legitimate expectation that the magistrate would discharge them directly to her.

33. As a result, the applicant would have seen herself forced to disregard the agreement she had passed with her clients and seek the payment of her fees from them. Furthermore, the recovery of the fees from individuals of poor means would risk being more difficult and lengthy than it would have been from the State.

34. The Court does not find the applicant's choice not to seek the payment of her fees from her clients unreasonable or arbitrary. It considers therefore that paragraph 3 of Section 1 of Law Decree No. 166/1996 imposed an excessive burden on the applicant and accordingly upset, to her detriment, the balance that must be struck between the protection of the right to the peaceful enjoyment of one's possessions and the requirements of the public interest.

Accordingly, there has been a breach of Article 1 of Protocol No.1 to the Convention.

B. Lawsuits in which the applicant had not requested the direct discharge of her fees

1. Whether there was a "possession" and an interference therewith

35. In the Court's view, to the extent that the applicant had earned certain fees on the ground of activities already carried out in relation to these proceedings, she had a "possession" within the meaning of Article 1 of Protocol No. 1. However, nothing prevented the applicant from claiming those fees from her clients irrespective of the termination of the proceedings. No direct relationship between the applicant and the State has either been sought through an application under Section 93, or established. The termination of the proceedings thus did not affect the applicant's right to claim her fees relating to the activities carried out until then from her clients, so that Law Decree No. 166/96 did not "interfere" with the applicant's possessions.

36. Accordingly, there has been no breach of Article 1 of Protocol No.1 to the Convention in this respect.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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."

38. The Court recalls that under Rule 60 of the Rules of the Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

39. In the present case, on 8 February 2000, after the application had been declared partly admissible, the applicant was invited by the Registry to submit her claims for just satisfaction; the applicant, who in the application

form had expressed her intention to seek an award for just satisfaction at a later stage in the proceedings, never submitted any such claims. Nor did she seek reimbursement of the legal costs for the proceedings before the Court.

40. In these circumstances, the Court considers that the finding of a violation constitutes in itself sufficient compensation for any non-pecuniary damage suffered by the applicants. That being so, the Court finds that it is not appropriate to make any award under Article 41 (see *Apeh Üldözötteinek Szövetsége, Iványi Róth and Szerdahelyi v. Hungary*, No. 32367/96, § 47, ECHR 2000-).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

Done in English and notified in writing on 19 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President