



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

CASE OF LAINO v. ITALY

(Application no. 33158/96)

JUDGMENT

STRASBOURG

18 February 1999

In the case of Laino 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. 11¹, and the relevant provisions of the Rules of Court², as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,

Mrs E. PALM,

Mr L. FERRARI BRAVO,

Mr G. BONELLO,

Mr J. MAKARCZYK,

Mr P. KŪRIS,

Mr R. TÜRMEŖEN,

Mr J.-P. COSTA,

Mrs F. TULKENS,

Mrs V. STRÁŽNICKÁ,

Mr P. LORENZEN,

Mr M. FISCHBACH,

Mr V. BUTKEVYCH,

Mr J. CASADEVALL,

Mrs H.S. GREVE,

Mr A.B. BAKA,

Mr R. MARUSTE,

and also of Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 3 December 1998 and 20 January 1999,

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

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention³, by an Italian national, Mr Michele Laino (“the applicant”), on 29 January 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 33158/96) against the Italian Republic lodged by

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

Mr Laino with the European Commission of Human Rights (“the Commission”) under former Article 25 on 12 June 1996.

The applicant’s application to the Court referred to former Article 48 as amended by Protocol No. 9¹, which Italy had ratified. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 and Article 8 of the Convention.

2. The applicant designated the lawyer, Mr C. Chiaromonte, who would represent him (Rule 31 of former Rules of Court B²).

3. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr R. Bernhardt, the President of the Court at the time, acting through the Registrar, consulted Mr U. Leanza, the Agent of the Italian Government (“the Government”), the applicant’s lawyer and Mr A. Perenič, the Delegate of the Commission, on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received the applicant’s memorial on 7 August 1998. The Government replied on 24 September 1998. On the same day, the Secretary to the Commission sent the Delegate’s observations to the Registry.

4. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr B. Conforti, the judge elected in respect of Italy (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr G. Bonello, Mr J. Makarczyk, Mr P. Kūris, Mr R. Türmen, Mrs F. Tulken, Mrs V. Strážnická, Mr P. Lorenzen, Mr V. Butkevych, Mr J. Casadevall, Mrs H.S. Greve, Mr A.B. Baka and Mr R. Maruste (Rule 24 § 3 and Rule 100 § 4). Subsequently Mr Conforti, who had taken part in the Commission’s examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Mr L. Ferrari Bravo, the judge elected in respect of San Marino, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

Notes by the Registry

1. Protocol No. 9 came into force on 1 October 1994 and was repealed by Protocol No. 11.

2. Rules of Court B, which came into force on 2 October 1994, applied until 31 October 1998 to all cases concerning States bound by Protocol No. 9.

5. After consulting the Agent of the Government and the applicant's lawyer, the Grand Chamber decided that it was not necessary to hold a hearing.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. On 15 March 1990 the applicant petitioned the Naples District Court for judicial separation from his wife, Mrs R. He also requested the court to determine the arrangements for custody of the children and use of the family home.

7. On 22 March 1990 the presiding judge of the court set down for 12 July 1990 the hearing on the attempt that had been made to reach a settlement. After finding that the attempt had failed, the presiding judge provisionally awarded custody of the children (born in 1984 and 1988) and use of the house to Mrs R., granted the father access twice a week (from 4 p.m. to 6 p.m. on Thursdays and from 10 a.m. to 1 p.m. on Sundays) and ordered him to pay Mrs R. maintenance of 600,000 Italian lire (ITL) a month. Lastly, he asked the parties to appear before the examining judge on 11 October 1990.

8. Three hearings (on 11 October 1990 and 7 March and 10 October 1991) were adjourned at the applicant's request on the ground that the parties were trying to settle their dispute out of court.

The preparation of the case for trial was not resumed until 13 February 1992. After a hearing, evidence was heard from four witnesses on 22 April 1993. A hearing on 25 November 1993 was adjourned by the court of its own motion to 15 December 1994.

9. On that date, as the respondent had requested, the judge responsible for preparing the case for trial ordered the case file to be sent to the District Court at Nola (province of Naples), which now had territorial jurisdiction to try the case.

The date set for the hearing before that court was not until 8 May 1997. On that day, however, the proceedings were adjourned by the court of its own motion to 10 July 1997 because the judge preparing the case for trial was absent. The parties filed their pleadings on 13 November 1997 and the hearing before the relevant division was held on 8 May 1998.

10. In a judgment of 27 May 1998, the text of which was deposited with the registry on that day, the court pronounced the couple judicially separated, confirmed the provisional measures regarding custody of the children and use of the family home and increased the maintenance to ITL 800,000 a month.

11. Neither of the parties appealed.

PROCEEDINGS BEFORE THE COMMISSION

12. Mr Laino applied to the Commission on 12 June 1996. He complained that his case had not been heard within a reasonable time as required by Article 6 § 1 of the Convention and that on account of the length of the proceedings his right to respect for his family life as guaranteed by Article 8 of the Convention had been infringed.

13. The Commission (First Chamber) declared the application (no. 33158/96) admissible on 28 May 1997. In its report of 16 September 1997 (former Article 31 of the Convention), it expressed the unanimous opinion that there had been a violation of Article 6 § 1 and that it was unnecessary to consider whether there had been a violation of Article 8. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

14. Counsel for the applicant asked the Court to hold that there had been violations of Article 6 § 1 and Article 8 of the Convention and to award his client just satisfaction.

15. The Government acknowledged that the proceedings in question had not complied with the "reasonable time" requirement of Article 6 § 1. They asked the Court not to take the second complaint into consideration.

THE LAW

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

16. The applicant submitted that he had been a victim of a violation of Article 6 § 1 of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

1. *Note by the Registry.* For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

A. Period to be taken into consideration

17. The period to be taken into consideration began on 15 March 1990, when the applicant petitioned the Naples District Court for judicial separation. It ended on 27 May 1998, the date of the Nola District Court's judgment. It therefore lasted just over eight years and two months.

B. Reasonableness of the length of the proceedings

18. According to the Court's case-law, the reasonableness of the length of proceedings has to be assessed, in particular, in the light of the complexity of the case and of the conduct of the applicant and of the relevant authorities. In cases relating to civil status, what is at stake for the applicant is also a relevant consideration and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (see, among other authorities, the *Maciariello v. Italy* judgment of 27 February 1992, Series A no. 230-A, p. 10, § 18, and, *mutatis mutandis*, the *Paulsen-Medalen and Svensson v. Sweden* judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 142, § 39).

19. The applicant drew particular attention to the delay in the proceedings after 15 December 1994, when the presiding judge of the Naples District Court ordered the case file to be transferred to the Nola District Court (which was by then the court with territorial jurisdiction to try the case). As no judge had been appointed, the case remained dormant until the hearing on 8 May 1997, which in the end was adjourned because the judge was absent.

20. The Commission found that there had been delays attributable to the domestic courts and therefore considered that the proceedings in question had failed to comply with the "reasonable time" requirement.

21. In their memorial to the Court the Government acknowledged that the length of the proceedings had not satisfied that requirement, regard being had, in particular, to the nature of the case and the special diligence called for – according to the Court's case-law – in the hearing of this type of case by domestic courts.

22. The Court observes at the outset that the respondent State cannot be considered responsible for the delay caused by the attempt to reach an out-of-court settlement, since Mr Laino had himself requested and been granted three adjournments of the hearing (see paragraph 8 above).

The Court notes further that the case was not particularly complex and that the preparation for trial consisted essentially in hearing evidence from four witnesses at the hearing on 22 April 1993 (*ibid.*).

As to the conduct of the authorities dealing with the case, the Court considers that, having regard to what was at stake for the applicant (judicial separation and determination of the arrangements for custody of the children

and access rights), the domestic courts failed to act with the special

diligence required by Article 6 § 1 of the Convention in such cases (see the *Maciariello and Paulsen-Medalen* and *Svensson* judgments cited above, pp. 10 and 142, §§ 18 and 39, respectively). The various periods of inactivity attributable to the State, in particular the ones from 25 November 1993 to 15 December 1994 and from the latter date to 10 July 1997, failed to satisfy the “reasonable time” requirement.

Having regard also to the total duration of the proceedings, the Court concludes that there has been a violation of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant complained that the length of the proceedings had resulted in an infringement of his right to respect for his family life. He relied on Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

24. In the Commission’s view, there was “no need to examine whether there ha[d], in the instant case, been a violation” of that provision.

The Government agreed with that conclusion.

25. Having regard to the finding in respect of Article 6 § 1 (see paragraph 22 above), the Court sees no reason to differ from the opinion expressed by the Commission.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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 damage

27. Mr Laino claimed 70,000,000 Italian lire (ITL) for the non-pecuniary damage which he had allegedly sustained and he requested the Court to take into account, when assessing that damage, the subject matter of the case and the very substantial delays in the proceedings.

28. The Government regarded the amount sought as wholly unjustified.

29. The Delegate of the Commission considered that the sum of ITL 17,000,000 would be fair.

30. The Court holds that the applicant undoubtedly sustained non-pecuniary damage. Having regard to the circumstances of the case and to the conclusions in paragraphs 22 and 25 of the present judgment, it decides to award him ITL 25,000,000.

B. Costs and expenses

31. The applicant also claimed reimbursement of ITL 16,305,440 in respect of his costs and expenses before the Commission and the Court.

32. The Government and the Delegate of the Commission did not express a view on the matter.

33. In accordance with its case-law, the Court awards the applicant the sum claimed for costs and expenses.

C. Default interest

34. 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 5% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* by fifteen votes to two that it is unnecessary to examine the complaint under Article 8 of the Convention;
3. *Holds* by sixteen votes to one that the respondent State is to pay the applicant, within three months, 25,000,000 (twenty-five million) Italian lire for non-pecuniary damage;

4. *Holds* unanimously that the respondent State is to pay the applicant, within three months, 16,305,440 (sixteen million three hundred and five thousand four hundred and forty) Italian lire for costs and expenses;
5. *Holds* unanimously that simple interest at an annual rate of 5% shall be payable on those sums from the expiry of the above-mentioned three months until settlement;
6. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 18 February 1999.

Luzius WILDHABER
President

Paul MAHONEY
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) partly dissenting opinion of Mr Ferrari Bravo;
- (b) joint partly dissenting opinion of Mrs Tulkens and Mr Casadevall.

L.W.
P.J.M.

PARTLY DISSENTING OPINION
OF JUDGE FERRARI BRAVO

(Translation)

I voted against the part of the judgment in which the applicant is awarded compensation for non-pecuniary damage. Far from sustaining any damage, he gained by the delay in delivering judgment in that he did not have to pay the larger sum for his children's maintenance that he was subsequently ordered to pay. In those circumstances I fail to see what the "non-pecuniary damage" could be. As to the rest, I agree that the Italian State should be found to have committed a violation on account of the excessive length of the judicial proceedings.

JOINT PARTLY DISSENTING OPINION
OF JUDGES TULKENS AND CASADEVALL

(*Translation*)

1. We regret that we cannot share the opinion expressed by the majority of the Grand Chamber, who adopted the Commission's approach and held that there was no need to examine the complaint under Article 8 of the Convention.

2. We consider, as the applicant requested, that the case should also have been examined under Article 8, which concerns the right to respect for family life. The consequences of excessive length of judicial proceedings are not the same in every case. In the present case the fact cannot be disregarded that the length of the proceedings (which lasted more than eight years up to the Nola District Court's judgment of 27 May 1998), which concerned, *inter alia*, custody and access arrangements in respect of the children, who were aged 6 and 2 at the beginning of the proceedings, may have entailed serious moral and emotional difficulties for the applicant in his relationship with his children.

3. Rightly or wrongly, but at all events irreversibly, Mr Laino therefore lost eight precious, formative and irretrievable years of regular, close contact with his children. In our opinion, that simple analysis sufficed to justify examining the complaint under Article 8 of the Convention.

4. Reiterating its case-law, the Court accepts in paragraph 18 of its judgment that special diligence is required in cases relating to civil status "in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life". Moreover, in paragraph 22, the Court holds that, "having regard to what was at stake for the applicant (judicial separation and determination of the arrangements for custody of the children and access rights), the domestic courts failed to act with the special diligence required by Article 6 § 1 of the Convention in such cases". Unfortunately, however, the Court did not draw the appropriate conclusions.

5. The foregoing considerations in the judgment support our view, since, without prejudging at this stage the decision we would have reached on the merits, we think that judicial proceedings lasting over eight years – in which custody and access rights in respect of young children were at issue – may have had harmful effects on the applicant's relationship with his children and therefore on his family life.