



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

SECOND SECTION

CASE OF BIELECTRIC SRL v. ITALY

(Application no. 36811/97)

JUDGMENT

STRASBOURG

16 November 2000

FINAL

16/02/2001

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 Bielectric Srl 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 G. BONELLO,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 4 May 2000 and 26 October 2000,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 36811/97) 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 a company registered in Italy, Bielectric srl (“the applicant company”), on 19 June 1997.

2. The applicant company was represented by Mr Mario Tuccillo, a lawyer practising in Novara (Italy). The Italian Government (“the Government”) were represented by their Co-Agent Mr Vitaliano Esposito, *magistrato*, on secondment to the Diplomatic Legal Service, Ministry of Foreign Affairs.

3. The applicant company alleged, in particular, that the length of the civil proceedings which it had instituted before the Italian courts had exceeded a “reasonable time” (Article 6 § 1 of the Convention).

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. A hearing took place in public in the Human Rights Building, Strasbourg, on 4 May 2000.

There appeared before the Court:

(a) *for the Government*

Mr Vitaliano ESPOSITO,

Co-Agent;

(b) *for the applicant*

Mr Mario TUCCILLO, of the Novara Bar,

Counsel,

The Court heard addresses by Mr Tuccillo and Mr Esposito.

7. By a decision of 4 May 2000 the Court declared the application partly admissible.

THE FACTS

8. On 9 April 1987, the applicant company summoned company X to appear before the Arezzo Court, requesting X to be ordered to carry out all the works and amendments necessary to bring a factory building into compliance with the law and the instructions given by the Pisa fire brigade in December 1986.

9. The preparation of the case for trial began at the hearing of 3 June 1987, when the court ordered that an expert opinion be carried out on the factory building and ended at the hearing of 2 November 1988, when the parties made their final submissions. The hearing before the court was held on 4 October 1989.

10. In a judgment of the same date, filed with the Registry on 16 November 1989, the Arezzo Court held that the construction of the factory building did not constitute a work under a contract (*appalto*) but a sale, and that the factory building was in accordance with all the legal requirements, the alleged defects being aesthetic. It ordered X to replace certain parts in the factory building.

11. On 21 June 1990, the applicant company lodged an appeal against this judgment before the Florence Court of Appeal.

12. The preparation of the case for trial began at the hearing of 2 October 1990 and, after a hearing held on 15 January 1991, it ended at the hearing of 2 April 1991, when the parties made their final submissions. On 18 February 1993 the applicant company filed written submissions with the court of appeal claiming that the works carried out by company X were in breach of the applicable anti-seismic legislation. The appeal was heard on 26 February 1993.

13. In a judgment of the same date which was filed with the Registry on 13 May 1993, the Florence Court of Appeal confirmed that the contract entered into by the parties was a sales contract and not a work contract, and held that the defects in the factory building were merely aesthetic and did not affect the structure. It further held that the applicant company had failed to prove that the failure by X to file the executive plans with the Construction Office had caused any financial prejudice to it and that in any event this issue had not been raised before the first instance.

14. On 12 May 1994, the applicant company lodged an appeal on points of law before the Court of Cassation.

15. The Court of Cassation set the public hearing for 16 October 1996.

16. On 25 July 1996 an attempt was made to serve notice of the date of the hearing on the applicant company at the chosen address of its lawyer. However, the latter having in the meantime died, the notification could not be effected. Notice of the date of the hearing was left for the applicant company in the Registry of the Court of Cassation on 19 August 1996. The applicant company did not learn about the date of the hearing and did not appear before the Court of Cassation at the hearing of 16 October 1996. Nor did company X appear at the hearing. The Court of Cassation heard addresses from the General Attorney.

17. By a judgment delivered on 16 October 1996, filed with the Registry on 9 April 1997, the Court of Cassation quashed the decision of the Florence Court of Appeal of 26 February 1993 only insofar as it related to the refusal to award to the applicant company compensation for the replacement of certain parts of the factory building and referred the matter back before the Florence Court of Appeal. The Court of Cassation confirmed the remainder of the appealed judgment.

18. On 2 August 1997 the applicant company resumed proceedings before the Florence Court of Appeal. Three hearings were held before it; the closing hearing was scheduled for 4 April 2000.

THE LAW

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

19. The applicant company maintained that the length of the proceedings at issue had exceeded a “reasonable time” in breach of Article 6 § 1 of the Convention, whose relevant part provides:

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

20. The applicant company submitted that the complexity of the case was not sufficient, of itself, to explain such a duration.

21. The Government conceded that the proceedings had been lengthy, but argued that this was due to the complexity of the case, namely the need for expert opinions. Further, the quashing by the Court of Cassation of part of the judgment was due to the change by the applicant company of its claims. They concluded that the length of the proceedings had not been unreasonable.

22. The Court notes that the proceedings at issue started on 9 April 1987 and are currently pending before the Florence Court of Appeal. The period to be taken into consideration is therefore over thirteen years.

23. The Court observes that it has found on a number of occasions (see, for example, *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V) that in Italy there is a practice incompatible with the Convention resulting from an accumulation of breaches of the “reasonable time” requirement. Where the Court finds such a breach, the accumulation concerned constitutes an aggravating circumstance of the violation of Article 6 § 1.

24. Having examined the facts of the case in the light of the parties’ arguments, and having regard to its case-law on the question, the Court considers that the length of the proceedings complained of did not satisfy the “reasonable time” requirement and that this was one more instance of the above-mentioned practice.

There has accordingly been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant company claimed a sum of 100,000,000 Italian lire (ITL) for the pecuniary damage which it had suffered in connection with the impossibility to start its manufacturing activity. It further asked the Court to award 50,000,000 ITL for the non-pecuniary damage it had sustained.

27. The Government contested these claims. They considered in particular that there was no evidence of a causal link between the pecuniary damage alleged and the length of the proceedings. The sum claimed by way of moral damage was excessive : they submitted that if the Court were to find that there had been a breach of the Convention, that decision would constitute sufficient just satisfaction.

28. The Court considers that the applicant company has failed to adduce evidence of any pecuniary damage sustained as a result of the length of the proceedings in question. The applicant company, however, must have sustained some non-pecuniary damage which the mere finding of a violation cannot adequately compensate (*Comingersoll SA v. Portugal* [GC], No. 35382/96, § 36, ECHR 2000-). The Court therefore awards it ITL 20,000,000.

B. Costs and expenses

29. The applicant company also sought reimbursement of the legal costs incurred before the Court, which he put at ITL 12,225,500 plus value-added tax. It further claimed a total of 65,486,228 ITL by way of costs and expenses in the domestic proceedings.

30. The Government left the matter of the costs incurred in the proceedings before the Court to the latter's discretion. As regard the costs incurred before the domestic courts, the Government maintained that there was no evidence of a causal link between them and the "unreasonable" length of the proceedings.

31. With regard to the costs incurred before the domestic courts, the Court observes that the applicant company failed to produce any evidence in support of its allegation that those costs were incurred with a view to obtaining redress of the violation of Article 6 of the Convention. Its claim under that head must therefore be dismissed.

As to the costs incurred before the Convention institutions, the Court, having regard to the information in its possession and to its practice, considers it reasonable to award the sum of ITL 8,000,000.

C. Default interest

32. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of the 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 company, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 20,000,000 (twenty million) Italian lire for non-pecuniary damage and 8,000,000 (eight million) Italian lire for costs and expenses;
 - (b) that simple interest at an annual rate of 2.5% shall be payable on those sums from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant company's claims for just satisfaction.

Done in English, and notified in writing on 16 November 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President