



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

SECOND SECTION

CASE OF VISINTIN v. ITALY

(Application no. 43199/98)

JUDGMENT

STRASBOURG

1 March 2001

DÉFINITIF

20/06/2001

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 Visintin v. Italy,

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

Mr C.L. ROZAKIS, *President*,
Mr B. CONFORTI,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mrs M. TSATSA-NIKOLOVSKA, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 6 April 2000 and on 8 February 2001,

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

PROCEDURE

1. The case originated in an application (no. 43199/98) 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 Claudio Visintin (“the applicant”), on 4 June 1998.

2. The applicant was represented by Mr Pietro Volpe, a lawyer practising in Spinea (Venice). The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, assisted by their Co-Agent, Mr V. Esposito.

3. The applicant complained under Article 6 § 1 of the Convention about the length of a set of criminal proceedings.

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 6 April 2000 the Court declared the application admissible.

THE FACTS

7. The applicant was born in 1957 and is currently residing in Scorzè (Venice). He is a police officer.

8. On 16 March 1995 the Venice Public Prosecutor questioned the applicant in relation to the charges of blackmail and receiving stolen goods brought against two of his colleagues, Mr F. and Mr L. Considering that the applicant had made false statements during his examination, the Public Prosecutor commenced criminal proceedings against him.

9. By an order of 18 March 1995, the Venice Public Prosecutor informed the applicant of the charge against him and requested him to appear on 24 March 1995 in order to be questioned. This order served on the applicant on 20 March 1995.

10. After the entry into force of law no. 332/95, on 23 August 1995 the proceedings against the applicant were suspended awaiting the outcome of those against Mr F. and Mr L. (hereinafter referred to as “the main set of proceedings”). The law at issue had amended Article 371-*bis* of the Criminal Code, providing that criminal proceedings for making false statements should be suspended until a first-instance judgment was given in the main set of proceedings or until the charges in those proceedings were discontinued.

11. On 9 June 1998 the applicant introduced a claim before the Venice investigating judge. He objected that Article 371-*bis* was unconstitutional, as contrary to the principles of equality of rights, presumption of innocence and fair administration of justice, as well as to the right of an accused person to defend himself (Article 24 of the Constitution).

12. By an order of 27 October 1998, the investigating judge, observing that the impugned provision was aimed at offering a procedural guarantee to the accused, whose responsibility could be properly ascertained only in the light of the outcome of the main set of proceedings, dismissed the applicant’s claim as being manifestly ill-founded.

13. On 19 November 1998, the applicant appealed on points of law against this order. By a decision of 28 June 1999, the Court of Cassation declared the applicant’s claim inadmissible and sentenced him to pay a fine of ITL 1 000 000.

14. The main set of proceedings - in which the date of the preliminary hearing had been fixed at 26 September 1998 and then adjourned to 31 October 1998 - had in the meanwhile been terminated. The trial hearing of the applicant’s proceedings was therefore scheduled for 7 October 1999.

15. On 15 March 2000 the applicant introduced a claim challenging the constitutionality of another provision of the Code of Criminal Procedure. The trial was therefore once again suspended awaiting the outcome of the proceedings before the Constitutional Court.

16. According to the information provided by the Government on 22 May 2000, at that date these proceedings were still pending.

THE LAW

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

17. The applicant complains about the length of the criminal proceedings against him. He alleges a violation of article 6 § 1 of the Convention, which, as far as relevant, reads as follows:

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

A. Period to be taken into consideration

18. These proceedings began on 20 March 1995, when the applicant was informed of the charge brought against him, and were on 22 May 2000 still pending at first instance. At that date, they had already lasted five years, two months and two days.

B. Reasonableness of the length of the proceedings

19. 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, *Pélissier et Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II and *Philis v. Greece* (no. 2) judgment of 27 June 1997, *Reports of judgments and decisions* 1997-IV, p. 1083, § 35).

20. According to the applicant, an overall duration of more than five years for one degree of jurisdiction is in breach of the “reasonable time” requirement. The Government disputed this claim.

21. The Court notes that the proceedings against the applicant were suspended on 23 August 1995 awaiting the outcome of the main set of proceedings. They were not resumed until 7 October 1999, which is four years, one month and fourteen days later. The Court acknowledges that the suspension at issue was aimed at guaranteeing that a decision on a charge of false statements is taken in the light of the outcome of the proceeding

concerning the persons in favour of which the statements under consideration were made. Such an aim is in accordance with the requirements of a fair administration of justice and with the spirit of Article 6 of the Convention. However, the State authorities' were on a duty to conduct the main set of proceedings in order to assure compliance with the "reasonable time" requirement both in these proceedings and in the proceedings for false statements. The Court observes that in the present case the outcome of the main set of proceedings had been awaited for more than four years, and that no convincing explanation for this delay has been given by the respondent Government.

22. In the light of the above, the Court considers that a global period of five years, two months and two days for proceeding which were at the date of the last information given by the Government still pending at first instance is in breach of the "reasonable time" requirement. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

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 alleges that the length of the criminal proceedings against him negatively affected his career as a police inspector and claims ITL 8 000 000 per year of duration. He also claims the reimbursement of the fine imposed on him by the Court of Cassation in its decision of 28 June 1999, amounting to ITL 1 000 000 (see paragraph 13 above). In respect of non-pecuniary damage, the applicant seeks the sum of ITL 10 000 000 per year of duration.

25. The Government submitted that there is no causal link between the length of the proceedings and the alleged pecuniary damage. As to the non-pecuniary damage, they maintained that a finding of a violation of the Convention constitutes sufficient just satisfaction.

26. The Court recalls that, according to its case-law, compensation of damage is recoverable only to the extent that a causal link is established between the violation of the Convention and the damage sustained. The Court finds that in the present case no such link has been established and accordingly rejects the applicant's claim for pecuniary damage.

27. However, the Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the criminal proceedings. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant ITL 16 000 000 as a compensation for non-pecuniary damage.

B. Costs and expenses

28. The applicant claims ITL 23 024 822 for the legal costs and expenses incurred before the Commission and the Court and ITL 3 272 406 for the costs incurred before the domestic courts.

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

30. According to the Court's 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. In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court firstly observes that there is no element in the file suggesting that the applicant has incurred, before the domestic courts, any extra costs and expenses because of the length of the proceedings. As to the legal costs and expenses incurred before the Commission and the Court, it considers that ITL 5 000 000 is a reasonable sum and awards the applicant that amount.

C. Default interest

31. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 3.5% 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, the following amounts: ITL 16 000 000 (sixteen millions), for non-pecuniary damage and ITL 5 000 000 (five millions), for costs and expenses;
 - (b) that simple interest at an annual rate of 3.5 % shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 1 March 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President