



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

SECOND SECTION

**CASE OF FERRARIN v. ITALY**

*(Application no. 34203/96)*

JUDGMENT

STRASBOURG

26 April 2001

**FINAL**

*05/09/2001*

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.



**In the case of Ferrarin 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. STRÁZNICKÁ,  
Mr P. LORENZEN,  
Mr M. FISCHBACH,  
Mrs M. TSATSA-NIKOLOVSKA, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 8 June 1999, 6 April 2000 and 12 April 2001,

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

**PROCEDURE**

1. The case originated in an application (no. 34203/96) 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, Aldo Ferrarin (“the applicant”), on 26 November 1996.

2. The applicant was represented by Mr G. A. Conte, a lawyer practising in Milan. 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, in particular, 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 partly admissible.

**THE FACTS**

7. The applicant was born in 1944 and is currently residing in Montecchio Precalcino (Vicenza). In 1978, he was the sole manager of a limited company, Nuova R.A.C.E. srl.

8. On 26 June 1986 the Milan Public Prosecutor requested the investigating judge to summon the applicant to appear in order to answer the charge of criminal bankruptcy (*bancarotta fraudolenta*). However, following the entry into force of the new code of criminal procedure on 24 October 1989, the investigating judge sent the case back to the Milan Public Prosecutor.

9. On 5 March 1990 the Milan Public Prosecutor requested that the applicant be committed for trial. On 6 March 1990 the applicant's name was entered into the register of pending proceedings, which is kept in the Public Prosecutor's Office.

10. By an order of 30 May 1990, served on the applicant on 18 June 1990, the investigating judge committed the applicant for trial commencing on 19 September 1990 before the Milan District Court.

11. By a judgment of 22 November 1990, filed with the registry on 4 December 1990, the Milan District Court sentenced the applicant to three years' imprisonment.

12. On 24 December 1990 the applicant lodged an appeal. He complained that he had been informed of the existence of criminal investigations against him only after 24 October 1989.

13. The hearing before the Milan District Court of Appeal was scheduled for 12 December 1995.

14. By a judgment of the same day, filed with the registry on 19 December 1995, the Milan Court of Appeal confirmed the first instance's judgment. The court pointed out that there was no legal obligation to inform the applicant about the existence of criminal investigations against him before the request for committal for trial.

15. On 26 January 1996 the applicant appealed on points of law. By a judgment of 7 May 1996, filed with the registry on 9 May 1996, the Court of Cassation rejected the appeal.

## THE LAW

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

16. 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 [a]... tribunal ...”

### **A. Period to be taken into consideration**

17. The applicant considers that the period to be taken into consideration started on 26 June 1986, when the Milan Public Prosecutor requested the investigating judge to summon him to appear in order to answer the charge of criminal bankruptcy.

18. The Government consider that the relevant date is 18 June 1990, when the investigating judge's order for committal for trial was served on the applicant.

19. The Court recalls that in criminal matters, the "reasonable time" referred to in Article 6 § 1 begins to run as soon as a person is "charged"; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened. "Charge", for the purposes of Article 6 § 1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected" (see the Reinhardt and Slimane-Kaïd v. France judgment of 31 March 1998, *Reports of judgments and decisions* 1998-II, p. 660, § 93).

20. The Court observes that the applicant was not implicated until he was informed that the investigating judge had committed him for trial. The period to be taken into consideration therefore began on 18 June 1990. It ended on 9 May 1996, when the Court of Cassation's judgment was filed with the registry.

21. The proceedings thus lasted five years, ten months and twenty-one days for three instances.

### **B. Reasonableness of the length of the proceedings**

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

23. According to the applicant, the overall duration of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government disputed this claim.

24. The Court observes that the case was not particularly complex. Moreover, it has not identified any delay in the proceedings which is attributable to the applicant's conduct.

25. As regards the conduct of the State authorities, the Court notes that there was a long period of inactivity between 24 December 1990, when the applicant lodged his appeal, and 12 December 1995, date of the hearing before the Milan Court of Appeal. The Government did not provide any convincing explanation for this delay.

26. The Court considers that this period, which amount to more than four years and eleven months, is in itself sufficient to conclude that the case was not heard within a "reasonable time".

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

## II. 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. Damage

27. The applicant alleges that the length of the criminal proceedings against him negatively affected his working activity and claims a minimum of ITL 50,000,000 for pecuniary damage. In respect of non-pecuniary damage, he seeks ITL 50,000,000.

28. The Government submits that there is no causal link between the length of the proceedings and the alleged pecuniary damage. As to the non-pecuniary damage, they maintain that a finding of a violation of the Convention would constitute sufficient just satisfaction.

29. 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.

30. 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 8,000,000 as a compensation for non-pecuniary damage.

## B. Costs and expenses

31. The applicant claims reimbursement of legal costs and expenses incurred in the preparation of his case before the Commission and the Court, which he put at ITL 22,032,000. He does not claim any reimbursement of costs incurred before the domestic courts.

32. The Government leaves the matter to be assessed by the Court in an equitable manner.

33. As to the legal costs and expenses incurred before the Strasbourg institutions, the Court considers that ITL 5,000,000 is a reasonable sum and awards the applicant that amount.

## C. Default interest

35. 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 8,000,000 (eight millions) in respect of 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 26 April 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH  
Registrar

Christos ROZAKIS  
President