



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

SECOND SECTION

CASE OF DI DONATO AND 3 OTHERS v. ITALY

(Application no. 41513/98)

JUDGMENT

STRASBOURG

26 April 2001

FINAL

26/07/2001

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 di Donato and 3 Others 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 21 October 1999 and on 12 April 2001,

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

PROCEDURE

1. The case originated in an application (no. 41513/98) 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 four Italian nationals, Mr Luigi Di Donato, Mr Raffaele Romano, Mr Vincenzo La Brocca and Mr Luigi Nunziato (“the applicants”), on 26 November 1997.

2. The applicants were represented by Mr Giovanni Romano, a lawyer practising in Benevento. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, assisted by their Co-Agent, Mr V. Esposito.

3. The applicants 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 21 October 1999 the Court declared the application admissible.

THE FACTS

7. The applicants were born respectively in 1937, 1941, 1949 and 1956 and are currently residing in Benevento. The first applicant is a professor, the second one is an accountant, the third one is a lawyer and the fourth one is a doctor.

8. In 1990 and 1991 the applicants were members of the Benevento Town Council ("*giunta municipale di Benevento*"). On 5 February 1993 the Benevento Public Prosecutor's Office informed the applicants that criminal proceedings had been instituted against them for abuse of power and misconduct in office.

9. On 17 April and 29 November 1993 and 31 May 1994, the Benevento Public Prosecutor requested the investigating judge to prolong the maximum period for the duration of the investigations.

10. On 26 January 1995 the Benevento Public Prosecutor's Office requested that the applicants and twenty-four other persons be committed for trial on the above-mentioned charges. The preliminary hearing, scheduled for 22 March 1995, was adjourned on four occasions because the lawyers of the Benevento Bar Association were on strike and eventually took place on 22 September 1995. On the latter date and on 25 September 1995 some of the accused were examined. The proceedings were adjourned until 6 October 1995.

11. After two hearings, on 1 December 1995, the investigating judge ordered a stay of proceedings pending a Constitutional Court judgment concerning a procedural issue which he considered to be relevant to the present case. In a judgment of 26 June 1996, filed with the registry on 3 July 1996, the Constitutional Court declared that this issue was manifestly ill-founded.

12. On 9 January 1997 the case was assigned to another investigating judge. The preliminary hearing was scheduled for 1 April 1997. On 18 April 1997 the parties presented their final submissions.

13. In a judgment of the same day, filed with the registry on 3 May 1997, the Benevento investigating judge decided to drop all the charges against the applicants. This decision became final on 3 June 1997.

THE LAW

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

14. The applicants complain about the length of the criminal proceedings against them. They allege 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 take into consideration

15. The proceedings began on 5 February 1993, when the applicants were informed of the charges brought against them, and ended on 3 June 1997, when the Benevento investigating judge’s decision became final.

16. They thus lasted four years, three months and twenty-nine days.

B. Reasonableness of the length of the proceedings

17. 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 of judgments and decisions* 1997-IV, p. 1083, § 35).

18. According to the applicants, an overall duration of almost four years and four months for one degree of jurisdiction is in breach of the “reasonable time” requirement laid down in Article 6 § 1 of the Convention. The Government disputed this claim on the ground that the case was complex, especially by reason of the number of the accused and of the nature of the legal issues involved.

19. The Court first notes that the case was of a certain complexity. As to the applicants’ conduct, it observes that the preliminary hearing, initially scheduled for 22 March 1995, was adjourned on four occasions by reason of lawyers’ strikes and eventually took place on 22 September 1995. The Court recalls that a delay in the criminal proceedings caused by a lawyers’ strike cannot be attributed to the State, whereas the period of time elapsed between the end of the strike and the new hearing is to be imputed to the conduct of the authorities (see the *Portington v. Greece* judgment of 23 September 1998, *Reports* 1998-VI, p. 2633, § 33). In the present case,

four hearings were scheduled in a period of six months, in which a number of lawyers' strikes took place. Therefore, the resulting delays cannot be attributed to the State's authorities.

20. However, the Court notes that there are two periods of inactivity imputable to the authorities dealing with the case: between 5 February 1993, when the applicants were informed that criminal proceedings had been instituted against them, and 26 January 1995, which was the date of the committal for trial, and between 3 July 1996, when the Constitutional Court's judgment was filed with the registry, and 9 January 1997, when the case was assigned to another investigating judge. The Government did not provide any explanation for these delays.

21. In these circumstances, the Court finds that a global period of four years, three months and twenty-nine days for one degree of jurisdiction fails to satisfy the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. In respect of pecuniary damage, the first applicant seeks the sum of ITL 30,000,000, while the others, claim ITL 50,000,000 each having regard, in particular, to the nature of their professional activity. As to non-pecuniary damage, the applicants seek the sum of ITL 30,000,000 each.

24. 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 would constitute sufficient just satisfaction.

25. 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.

26. However, the Court accepts that the applicants 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 applicants ITL 12,000,000 each as a compensation for non-pecuniary damage.

B. Costs and expenses

27. The applicants claim reimbursement of legal costs and expenses incurred in the preparation of their case before the Commission and the Court, which they put at ITL 22,385,980. The applicants do not claim any reimbursement of costs incurred before the domestic courts.

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

29. As to the legal costs and expenses incurred before the Convention organs, the Court awards the applicants the global sum of ITL 8,000,000.

C. Default interest

30. 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, BY 4 VOTES AGAINST 3,

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 applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts: ITL 12,000,000 (twelve millions) each for non-pecuniary damage, and ITL 8,000,000 (eighth 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 applicants' 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

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Lorenzen, joined by Mrs Rozakis and Conforti, is annexed to this judgment.

E.F.
C.R.

DISSENTING OPINION OF JUDGE LORENZEN JOINED BY JUDGES ROZAKIS AND CONFORTI

In this case I am not able to agree with the majority that there has been a violation of Article 6 § 1 of the Convention. The criminal proceedings concerned 24 persons and were of a certain complexity. They had to be adjourned 4 times because of lawyer's strikes for which the State is not responsible.

Furthermore the proceedings were stayed for more than 7 months pending a Constitutional Court judgement. It is true that almost 2 years elapsed from when the applicants were informed of the criminal proceedings against them and until they were committed for trial. However, during this period the Public Prosecutor carried out investigations and even if no details are given, it is in my opinion not justified to consider this period as a period of total inactivity.

According to a global assessment, 4 years and almost 4 months cannot be considered unreasonable under the circumstances and a violation cannot be found based solely on the fact that a little more than 6 months elapsed from the judgement of the Constitutional Court and until the case was assigned to another investigating judge.