



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

SECOND SECTION

CASE OF SCHIAPPACASSE v. ITALY

(Application no. 43536/98)

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 Schiappacasse 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 M. FISCHBACH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr E. LEVITS, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 9 December 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. 43536/98) 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 Stefano Schiappacasse (“the applicant”), on 11 September 1998.

2. The applicant was represented by Mr Marco Valerio Santonocito, a lawyer practising in Rome. 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 9 December 1999 the Court declared the application admissible.

THE FACTS

7. The applicant was born in 1961 and is currently residing in Turin. He is an officer in the Italian Army.

8. On 7 August 1990 Mr G.B. filed a criminal complaint against the applicant, stating that in December 1989 the latter, in his capacity as officer, had forced two recruits to give him money. On 20 August 1990, however, Mr G.B. withdrew his complaint, considering that the recruits' version was not credible.

9. In an order of 25 May 1992, the Cosenza investigating judge committed the applicant for trial, commencing on 13 May 1993 before the Cosenza District Court on a charge of extortion.

10. A number of hearings took place. They were postponed either by reason of legitimate impediment of the applicant, or because of witnesses' absence, or finally because of lawyer's strikes. On 17 September 1996 the two recruits were examined. On 18 December 1997 and 5 February 1998, Mr G.B. and three other witnesses were examined.

11. In a judgment of 5 February 1998, filed with the registry on 25 February 1998, the Cosenza District Court acquitted the applicant. This decision became final on 19 April 1998.

THE LAW

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

12. 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 take into consideration

13. The proceedings began on 25 May 1992, which was the date of the committal for trial, and ended on 19 April 1998, when the Cosenza District Court's judgment became final.

14. They thus lasted five years, ten months and twenty-five days for one instance.

B. Reasonableness of the length of the proceedings

15. 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).

16. 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 rejected this allegation, on the ground that several hearings were postponed either by reason of legitimate impediment of the applicant, or because of the absence of some witnesses, or finally because of lawyer's strikes. They furthermore relied on the excessive workload of the Cosenza District Court.

17. The Court first notes that the case was not complex. As to the applicant's conduct, it observes that between May 1993 and September 1996 some hearings were postponed by reasons of legitimate impediment of the applicant and because of lawyer's strikes. Even if the applicant may be considered to be responsible for some of these delays and even considering the complications which strikes may cause by overloading the list of cases to be heard by courts, the Court considers that this cannot justify the total duration of the proceedings (see, *mutatis mutandis*, the *Portington v. Greece* judgment of 23 September 1998, *Reports* 1998-VI, p.2632, § 29; the *Zana v. Turkey* judgment of 25 November 1997, *Reports* 1997-VII, p.2552, § 79).

18. As regards the conduct of the State's authorities, the Court observes that there are periods the length of which has not been justified: between 25 May 1992, date of the committal for trial, and 13 May 1993, date of the first hearing; and between the hearings of 17 September 1996 and 18 December 1997. These delays, which amount to a global period of two years, two months and twenty days, cannot be excused by the volume of work with which the Cosenza District Court had to deal at the relevant period. In this respect, the Court recalls that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (*Portington v. Greece* judgment of 23 September 1998, *Reports* 1998-VI, p. 2633, § 33).

19. Having regard to the conduct of the authorities dealing with the case, the Court considers that an overall length of five years, ten months and twenty-five for one instance is excessive. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant alleges that the length of the criminal proceedings against him negatively affected his career in the Italian Army and claims a lump-sum of ITL 167,757,750. In respect of non-pecuniary damage, he seeks ITL 83,878,875.

22. 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.

23. 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.

24. 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.

B. Costs and expenses

25. The applicant claims reimbursement of legal costs and expenses incurred in the preparation of his case before the Commission and the Court, which he puts at ITL 10,510,000. He does not claim any reimbursement of costs incurred before the domestic courts.

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

27. As to the legal costs and expenses incurred before the Convention organs, the Court, deciding on an equitable basis, awards the applicants the global sum of ITL 5,000,000.

C. Default interest

28. 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 26 April 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President