



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

SECOND SECTION

CASE OF ARGANESE v. ITALY

(Application no. 44970/98)

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 Arganese 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 P. LORENZEN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr E. LEVITS,

Mr A. KOVLER, *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. 44970/98) 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 Luigi Arganese (“the applicant”), on 18 September 1998.

2. The applicant was represented by Mr V. La Brocca and Mr S. Rando, two lawyers 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 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 1958 and is currently residing in Bucciano (Benevento). Until 1991, the applicant was a member of the Bucciano Town Council (*Giunta municipale di Benevento*).

8. On an unspecified date the Benevento Public Prosecutor's Office commenced criminal proceedings against the applicant on charges of aggravated abuse of public authority (*abuso d'ufficio*) in the course of his duties as a member of the Town Council.

9. On 28 June 1993 the Benevento Public Prosecutor requested that the applicant and nineteen other persons be committed for trial. By an act filed with the Registry on 29 June 1993, the Benevento investigating judge scheduled the date of the preliminary hearing for 1 March 1994. This act was subsequently served on all the accused, who were thus informed of the charges brought against them.

10. The preliminary hearing was adjourned until 20 September 1994. In an order of the same day, the investigating judge committed the applicant and eighteen other persons for trial, commencing on 18 May 1995 before the Benevento District Court. A new charge of forgery was brought against the applicant and four of his co-accused.

11. The hearing of 18 May 1995 was adjourned because the lawyers of the Benevento Bar association were on strike until 27 May 1995.

12. On 11 April 1996 the District Court declared that the order committing the accused for trial was null and void and ordered that the case-file be returned to the investigating judge.

13. On 18 June 1996 the Benevento investigating judge issued a fresh committal for trial and fixed the hearing before the Benevento District Court at 12 December 1996. On that date the proceedings were adjourned by reason of a legitimate impediment of one of the accused and of two lawyers.

14. On 14 April 1997 the District Court, observing that the order fixing the date of the hearing had not been served on some of the accused, adjourned the case until 20 October 1997. This hearing was subsequently postponed at the request of some of the accused.

15. On 15 January 1998 some witnesses were examined and the parties presented their final pleadings.

16. In a judgment of the same day, filed with the registry on 29 January 1998, the District Court acquitted the applicant and all his co-accused. This decision became final on 1 April 1998.

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 [a] ... tribunal ...”

A. Period to take into consideration

18. The proceedings began on 29 June 1993, when the Benevento investigating judge scheduled the date of the preliminary hearing, and ended on 1 April 1998, when the Benevento District Court’s judgment became final.

19. They thus lasted four years, nine months and three days for one degree of jurisdiction.

B. Reasonableness of the length of the proceedings

20. 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).

21. 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 relying on the excessive workload of the Benevento District Court.

22. The Court first notes that the case was not particularly complex. As to the applicant’s conduct, it observes that the hearing of 18 May 1995 was postponed because the lawyers of the Benevento Bar association were on strike until 27 May 1995. In this respect, it is to be recalled 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 the following hearing was fixed at 11 April 1996, which is more than ten months after the end of the strike.

Even if the Court is not unaware of the complications which strikes may cause by overloading the list of cases to be heard by courts (see, *mutatis mutandis*, the Papageorgiou v. Greece judgment of 22 October 1997, *Reports* 1997-VI, p. 2291, § 48), it considers that this delay is excessive and must be imputed, at least in part, to the State authorities.

23. The Court furthermore notes that the hearings of 12 December 1996 and 20 October 1997 were adjourned, respectively, by reason of a legitimate impediment of one of the accused and of two lawyers, and at the request of some of the accused. These events are objective facts, not imputable to the State authorities and to take into consideration in order to assess whether the “reasonable time” requirement contained in Article 6 § 1 has been complied with.

24. As regards the conduct of the authorities dealing with the case, the Court notes that there have been long delays in fixing the dates of the hearings. In particular, on 29 June 1993, the date of the preliminary hearing was scheduled for 1 March 1994, and on 20 September 1994 the date of the trial hearing was fixed at 18 May 1995. These delays, which amount to a global period of almost one year and four months, cannot be excused by the volume of work with which the Benevento 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).

25. Having regard to the conduct of the authorities dealing with the case, the Court considers that an overall length of four years, nine months and three days 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

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 seeks ITL 50,000,000 for non-pecuniary damage.

28. The Government maintain that a finding of a violation of the Convention would constitute sufficient just satisfaction.

29. 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 13,000,000.

B. Costs and expenses

30. The applicant claims ITL 8,086,968 for legal costs and expenses incurred in the preparation of his case before the Commission and the Court.

31. The Government leave the matter to be assessed by the Court in an equitable manner.

32. As to the legal costs and expenses incurred before the Convention organs, the Court, deciding on an equitable basis, awards the applicant ITL 5,000,000.

C. Default interest

33. 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 13,000,000 (thirteen 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