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

SECOND SECTION

CASE OF ICOLARO v. ITALY

(Application no. 45260/99)

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 Icolaro 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,
Mr M. FISCHBACH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS, *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. 45260/99) 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 Costantino Icolaro ("the applicant"), on 30 October 1999.

2. The applicant was represented by Mr Pietro Palma, 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 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 21 October 1999 the Chamber declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

8. The applicant was born in 1948 and is currently residing in Moiano (Benevento). In 1988, he was a member of the Bucciano (Benevento) Municipal Commission (“*Commissione municipale*”), a body responsible for expressing opinions on the granting of public allowances.

9. On 23 March 1991 M. A. filed a criminal complain (denuncia) against the applicant for abuse of public authority (“*abuso d’ufficio*”).

10. On an unspecified date the Benevento Public Prosecutor’s Office commenced criminal proceedings against the applicant on charges of abuse of public authority in the course of his duties as a member of the Municipal Commission.

11. On 10 October 1991 the Benevento Public Prosecutor’s Office requested that the applicant and six other persons be committed for trial on charges of abuse of public authority, forgery and swindle.

12. The date of the preliminary hearing, scheduled for 22 January 1992, was first postponed until 15 April 1992 at the Public Prosecutor’s request, then adjourned because of the political elections on 5 and 6 April 1992.

13. A hearing scheduled for 1 July 1992 was postponed until 28 October 1992 in order to enable the lawyers of the Benevento Bar Association to take part in an assembly. On 28 October and 25 November 1992, as well as on 20 January and 3 March 1993, the case was adjourned awaiting the outcome of a connected set of criminal proceedings. Two hearings on 2 June and 20 October 1993 were postponed by reason of a lawyers’ strike of indefinite duration.

14. On 17 November 1993 the parties presented their conclusive arguments and on an unspecified date the Benevento investigating judge committed the applicant and his six co-accused for trial, commencing before the Benevento District Court on 3 October 1994.

15. This hearing was adjourned at the request of one of the accused until 3 April 1995, then postponed by the District Court of its own motion. Three hearings scheduled for 12 May, 14 June and 13 July 1995 were adjourned because of three different lawyers’ strikes, ending respectively on 27 May, 24 June and 13 July 1995. On 20 October 1995 and 18 January 1996, some witnesses were examined and the parties presented their final pleadings.

16. In a judgment of 18 January 1996, filed with the court’s registry on 25 January 1996, the District Court convicted the applicant for abuse of public authority to six months’ imprisonment and to a fine of 400,000 lire.

17. On 28 February 1996, the applicant lodged an appeal with the Naples Court of Appeal. By an act of 8 May 1997, the President of the Court of Appeal scheduled the date of the hearing for 18 June 1997. However, the proceedings were adjourned first until 10 November 1997, then until 9 February 1998 by reason of a lawyers’ strike. On 29 April 1998, the parties presented their final pleadings.

18. In a judgment of the same day, filed with the court's registry on 12 May 1998, the Naples Court of Appeal acquitted the applicant. This decision became final on 22 June 1998.

THE LAW

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

19. 20. 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

21. The proceedings began on 10 October 1991, when the Benevento Public Prosecutor's Office requested that the applicant and six other persons be committed for trial on charges of abuse of public authority, forgery and swindle, and ended on 22 June 1998, when the Naples Court of Appeal's judgment became final.

22. They thus lasted six years, eight months and twelve days for two instances.

B. Reasonableness of the length of the proceedings

23. 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).

24. According to the applicant, the overall duration of the proceedings is in breach of the "reasonable time" requirement. The Government disputed this claim, on the ground that most of the hearings were postponed by reason of the applicant and his counsel's behaviour, and because of lawyers' strikes.

25. The Court first notes that the case was not complex. As to the applicant's conduct, it observes that the hearing of 2 March 1995 was

adjourned until 15 February 1996 due to a legitimate impediment of the applicant's counsel. Even if this adjournment was requested by the applicant and he may be considered partly responsible for the delay which resulted, this cannot justify the delay of almost one year in rehearing the case (see the Zana v. Turkey judgment of 25 November 1997, *Reports* 1997-VII, p. 2552, § 79). The Court moreover notes that the hearing of 16 June 1994 was postponed to 1 March 1995 by reason that the lawyers were on strike from 13 until 18 June 1994. In this respect, 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). 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). Nevertheless, having regard to the fact that the following hearing was fixed at 1 March 1995, which is more than eight months after the end of the strike, the Court considers that this period must be imputed, at least partly, to the State's authorities.

26. As regards the conduct of the State's authorities, the Court observes that there has been a period of inactivity which has not been justified: between 12 November 1992, when the committal for trial was served on the applicant, and 9 December 1993, date of the first hearing. Moreover, the hearing of 15 February 1996 was adjourned by the Magistrate's own motion first until 23 January, then until 10 July 1997. These delays, which amount to a global period of more than two years and five months, cannot be excused by the volume of work with which the Cosenza District Court had to contend 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).

27. Having regard to the conduct of the authorities dealing with the case, the Court considers that an overall length of five years, one month and twenty-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

28. 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

29. The applicant seeks ITL 70,000,000 for non-pecuniary damage.

30. The Government maintained that a finding of a violation of the Convention would constitute sufficient just satisfaction.

31. 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 15,000,000.

B. Costs and expenses

32. The applicant claims ITL 15,387,209 for the legal costs and expenses incurred before the Commission and the Court and ITL 11,002,278 for the costs incurred before the domestic courts.

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

34. 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

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 15,000,000 (fifteen 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	Christos ROZAKIS
Registrar	President