



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

SECOND SECTION

CASE OF TOMMASO PALUMBO v. ITALY

(Application no. 45264/99)

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 Tommaso Palumbo 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. 45264/98) 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 Tommaso Palumbo (“the applicant”), on 11 September 1998.

2. The applicant was represented by Mr A. Nardone, 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 Court declared the application admissible.

THE FACTS

7. The applicant was born in 1970 and is currently residing in Benevento.

8. On 1 April 1992, the applicant, charged with sale of drugs (*detenzione di sostanze stupefacenti a fine di spaccio*), was arrested in Benevento. On 3 April 1992, the Benevento investigating judge ordered that the applicant be released.

9. In an order of 17 November 1992, the Benevento investigating judge committed the applicant and a certain Mr M. for trial, commencing on 24 June 1993, before the Benevento District Court.

10. The hearing of 24 June 1993 was postponed until 2 June 1994 because of a lawyers' strike of indefinite duration. On the latter date one witness was heard.

11. On 27 April 1995, the case was adjourned to 21 March 1996 because the lawyers of the Benevento Bar Association were on strike until 6 May 1995. However, by reason of the political elections of 21 March 1996, no hearing took place until 28 November 1996. On the latter date the proceedings concerning the applicant were separated from those concerning Mr M. and adjourned because the witnesses summoned to appear were absent.

12. On 2 June 1997, the District Court ordered that a fresh summons be served on the applicant. The proceedings were adjourned until 9 February 1998, when two witnesses and the applicant were heard and the parties presented their final pleadings.

13. In a judgment of 9 February 1998, filed with the registry on 13 February 1998, the Benevento District Court acquitted the applicant. This decision became final on 27 March 1998.

THE LAW

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

14. 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

15. The proceedings began on 1 April 1992, when the applicant was arrested, and ended on 27 March 1998, when the Benevento District Court's judgment became final.

16. They thus lasted five years, eleven months and twenty-six days for one degree of jurisdiction.

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 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 lawyers' strikes, or because of the political elections, or finally because of the absence of some witnesses. They furthermore relied on the excessive workload of the Benevento District Court.

19. The Court first notes that the case was not particularly complex. It observes that the hearings of 24 June 1993 and 27 April 1995 were postponed by reason of the lawyers' strikes. 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 hearings were fixed respectively at 2 June 1994 and 21 March 1996. The Court is not unaware of the complications which strikes may cause by overloading the list of cases to be heard by courts (see the *Papageorgiou v. Greece* judgment of 22 October 1997, *Reports* 1997-VI, p. 2291, § 48), and has taken note that the first strike had been announced to be of indefinite duration. However, it considers that a delay of almost eleven months in scheduling the subsequent hearings is excessive and must be imputed, at least in part, to the State authorities.

20. As regards the conduct of the authorities dealing with the case, the Court notes that the hearing of 21 March 1996 was adjourned until 28 November 1996 by reason of the political elections. Moreover, there had been long intervals between the trial hearings: from 2 June 1994 until 27 April 1995; from 28 November 1996 until 2 June 1997. These delays, which amount to a global period of more than two years and one month, 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).

21. Having regard to the conduct of the authorities dealing with the case, the Court considers that an overall length of five years, eleven months and twenty-six days for one degree of jurisdiction is excessive. 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. The applicant seeks ITL 60,000,000 for non-pecuniary damage. He alleges that the length of the criminal proceedings against him negatively affected his reputation.

24. The Government submit 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.

25. 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 14,000,000.

B. Costs and expenses

26. The applicant claims ITL 12,779,100 for the legal costs and expenses incurred before the Commission and the Court.

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

28. The Court considers that ITL 5,000,000 is a reasonable sum and awards the applicant that amount.

C. Default interest

29. 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 14,000,000 (fourteen 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