



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

**CASE OF MARTINEZ v. ITALY**

*(Application no. 41893/98)*

JUDGMENT

STRASBOURG

26 July 2001

**FINAL**

***26/10/2001***

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 Martinez 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 P. LORENZEN,

Mr M. FISCHBACH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr E. LEVITS,

Mr V. ZAGREBELSKY, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 21 October 1999 and on 5 July 2001,

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

**PROCEDURE**

1. The case originated in an application (no. 41893/98) 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 Michele Martinez (“the applicant”), on 2 April 1998.

2. The applicant was represented by Mr S. Gentile and Mr R. Gentile, two lawyers 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 21 October 1999 the Court declared the application admissible.

## THE FACTS

7. The applicant was born in 1931 and is currently residing in Rome. He works for the Ministry of Foreign Affairs, as a diplomat.

8. On 30 March 1993 the applicant received an official notification that preliminary investigations had been opened against him for corruption and forgery. On 7 December 1994 the Public Prosecutor's Office requested the investigating judge to commit the applicant for trial. The applicant was heard by certain police officers in April 1995.

9. On 23 March 1996 the applicant and four other persons were committed for trial before the Rome District Court.

10. The first hearing, scheduled for 26 June 1996, was adjourned until 8 January 1997 at the request of one of the accused.

11. On 6 February 1997 the hearing was postponed by reason of a legitimate impediment of a co-accused.

12. On 12 February 1997 ten witnesses were examined.

13. On 20 March 1997 the proceedings were adjourned by reason of a lawyers' strike.

14. On 26 and 27 March 1997 a number of witnesses were examined.

15. A hearing scheduled for 9 April 1997 was adjourned until 4 February 1998, due to a legitimate impediment of one of the accused. On the latter date the case was adjourned because of the absence of all the witnesses.

16. On 13 February and 4 March 1998 some witnesses were examined and the last hearing was postponed by reason of a legitimate impediment of the counsel of a co-accused.

17. On 26 March 1998 the proceedings were adjourned because of the absence of all the witnesses.

18. On 10 April 1998 the hearing was postponed because of the absence of a co-accused and on 8 May 1998 the judge adjourned the case because the last-mentioned co-accused had not been informed of the date of the hearing and because of the absence of a witness.

19. On 11 November 1998 the case was adjourned because of a lawyers' strike until 11 January 1999, then postponed until 25 January 1999 by reason of the absence of certain witnesses. On the latter date, a few witnesses were examined and, because of the absence of a co-accused, the judge ordered an expertise and adjourned the case. On 27 January 1999 an expert was appointed. On 8 February 1999 the expert's report was submitted and some witnesses were examined.

20. On 22 February 1999 the case was once again postponed until 26 April 1999 because of a lawyers' strike. On the latter date the judge admitted some documents produced by the Public Prosecutor.

21. On 12 July 1999 the proceedings were adjourned because of a lawyers' strike.

22. On 12 April and 29 May 2000 the case was postponed by reason of legitimate impediments of a co-accused.

23. The hearing of 12 July 2000 was postponed because the Chamber of the Rome District Court was composed of judges others than those who had taken part in previous hearings. On 29 November 2000, 22 January and 14 February 2001 some witnesses were examined.

24. In a judgment of 14 February 2001, filed with the registry on 23 March 2001, the Rome District Court acquitted the applicant because the relevant facts had not been established (*il fatto non sussiste*).

## THE LAW

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

25. 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

26. The proceedings began on 30 March 1993, when the applicant was informed of the charges brought against him, and ended on 23 March 2001, when the Rome District Court’s judgment was filed with the registry.

27. They thus lasted more than seven years and eleven months.

#### B. Reasonableness of the length of the proceedings

28. 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).

29. 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

the case was complex, especially by reason of the number of witnesses to be examined. They furthermore observed that a number of hearings were postponed either by reasons which cannot be imputed to the national authorities, such as the legitimate impediments of the accused and of their counsels, the lawyers' strikes, the absence of some witnesses.

30. The Court notes that the case was of a certain complexity.

31. However, the Court has taken note of some periods of inactivity imputable to the authorities dealing with the case: between 30 March 1993, when the applicant was informed of the charges brought against him, and 7 December 1994, the date of the request of the committal for trial; from April 1995, when the interrogation of the applicant took place and 23 March 1996, the date of the committal for trial. The Government did not provide any explanation for these delays, which amount to a global period of more than two years and six months. Moreover, the public trial before the Rome District Court lasted from 26 June 1996 until 14 February 2001, which is more than four years and seven months. It is true that some adjournments of the hearings were due to objective facts, such as the lawyers' strikes, the absence of some witnesses and the legitimate impediment of the accused, which cannot, as such, be imputed to the State authorities. However, the Court considers that, even if these facts may to some extent have slowed down the proceedings, they cannot, on their own, explain such a length of time (see, *mutatis mutandis*, the Zana v. Turkey judgment of 25 November 1997, *Reports* 1997-VII, p.2552, § 79).

32. In sum, the duration of the proceedings has exceeded a "reasonable time". There has accordingly been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant alleges that the length of the criminal proceedings against him negatively affected his career as diplomat and claims ITL 25,000,000 for pecuniary damage. In respect of non-pecuniary damage, the applicant seeks ITL 20,000,000.

35. 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.

36. 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.

37. 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 20,000,000 as a compensation for non-pecuniary damage.

### **B. Costs and expenses**

38. The applicant claims ITL 6,968,232 for legal costs and expenses incurred in the preparation of his case before the Commission and the Court. The applicant does not claim any reimbursement of costs incurred before the domestic courts.

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

40. 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**

41. 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 20,000,000 (twenty 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 July 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH  
Registrar

Christos ROZAKIS  
President