



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

SECOND SECTION

CASE OF SCIORTINO v. ITALY

(Application no. 30127/96)

JUDGMENT

STRASBOURG

18 October 2001

FINAL

27/03/2002

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 Sciortino 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 G. BONELLO,

Mr P. LORENZEN,

Mr E. LEVITS,

Mr A. KOVLER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 27 September 2001,

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

PROCEDURE

1. The case originated in an application (no. 30127/96) against the Italian Republic 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, Giacomo Sciortino (“the applicant”), on 3 May 1993.

2. The applicant was represented before the Court by Mr A.E. Amorello, a lawyer practising in Palermo. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, assisted by Mr V. Esposito, Co-agent of the Italian Government at the European Court of Human Rights.

3. The applicant alleged the excessive length of the proceedings before the Court of Audit following application No. 1025/94, as well the failure of the Administration of the Sicily Region to pay him all the sums of money, including interests, he is entitled to pursuant to the decision of the Court of Audit of 23 November 1993 and to the decision of the Sicily Regional Administrative Court of 11 July 1997.

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 14 December 2000, the Court declared the application admissible.

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

THE FACTS

A. The authorities' failure to fully comply with the Sicily Regional Administrative Court's judgment of 11 July 1997

8. The applicant served in the administration of the Sicily Region from 1945 to 1978, holding different posts.

9. The method and the basis of calculation of the pension to which the applicant is entitled have been modified several times by a series of regional laws.

10. Amongst others, according to Regional Law No. 145/1980, the applicant's pension was recalculated and increased. Further modifications in the determination of the applicant's pension were made on the basis of Regional Law No. 41/1985.

11. In July 1990 the applicant filed an application with the Court of Audit seeking recognition and payment of the increase of pension granted by Regional Law No. 41/1985. On 23 November 1993 the Court of Audit admitted the claim and ordered that the Sicily Region pay the applicant the increases of pension he was entitled to, the revaluation of the amounts due and the statutory interest, accrued from November 1985 to the date on which the applicant would actually receive them.

12. In relation to the delays in complying with the decision of the Court of Audit of 23 November 1993, the applicant filed "compliance" proceedings (*"ricorso per l'ottemperanza"*) with the Sicily Regional Administrative Court (RAC).

13. On 11 July 1997 the Sicily RAC granted the claim and ordered the competent regional administration to comply fully with the above-mentioned judgment within 60 days from the date when the decision would be served or communicated to the applicant. The Sicily RAC also nominated a special commissioner (*"commissario ad acta"*) who was to intervene if, upon expiration of the 60 day-period, the administration of the Region had not paid. The commissioner was empowered to take the necessary measures to ensure compliance with the decision within further 30 days at the latest.

14. According to the calculations made by the applicant's counsel and covering a period up to 31 December 2000, the applicant was entitled to receive the overall gross sum of 10 254 250 Italian lire (ITL). The Government have not disputed these calculations.

15. On 20 May 1998, the competent regional administration paid to the applicant 289 136 ITL. However, on 4 August 1998 the Presidency of the Sicily region urged the competent regional administration to speed up the compliance with a series of judgments favourable to the applicant, including the one at issue. Subsequently, on 21 June 1999 the applicant received 4 030 000 ITL. Yet the applicant contested this sum and complained that the competent administration had used a different method of calculation than the one envisaged by the RAC judgment of 11 July 1997.

16. In any event, the applicant maintains that on 31 December 2000 he was still entitled to receive the sum of 5 976 400 ITL. The Government have not disputed this allegation.

B. The proceedings before the Court of Audit related to application No. 1025/94

17. On 19 April 1994 the applicant had lodged another application (No. 1025/94) with the Court of Audit (jurisdictional section for the Sicily Region), claiming that Regional Laws No. 7/1971 and No. 145/1980 had been erroneously enforced and seeking a recalculation of his pension. A first hearing was fixed at 6 November 1998.

18. This controversy was settled by a judgment of 23 March 1999, filed with the registry on 10 May 1999, which partially granted the applicant's claim.

THE LAW

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

19. The applicant complains in the first place about the length of the proceedings before the Court of Audit following Application No. 1025/94.

20. Article 6 § 1 of the Convention provides as follows :

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time ... by [a] ... tribunal ...”

21. The proceedings at issue started on 19 April 1994 and ended on 10 May 1999. They have thus lasted five years for one level of jurisdiction.

22. The Government stress that the applicant has lodged several other applications and argue that the latter has never asked for the proceedings to be expedited.

23. The applicant maintains that the duration of the proceedings has exceeded the reasonable time.

24. The Court recalls that it held in four judgments of 28 July 1999 (see, for example, *Bottazzi v. Italy*, no. 34884/97, *Reports of Judgments and Decisions* 1999-V, § 22) that there was in Italy an accumulation of breaches of the “reasonable time” requirement constituting a practice contrary to the Convention.

25. Having examined the facts of the case in the light of the arguments put forward by the parties and having regard to its case-law in this field, the Court considers that the length of the proceedings failed to meet the “reasonable time” requirement and constitutes a further example of the practice referred to above.

26. Accordingly, there has been a violation of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

27. The applicant further complains that the Administration of the Sicily Region has not yet paid him all the sums of money, including interests, he is entitled to pursuant to the decision of the Court of Audit of 23 November 1993 and to the decision of the Sicily RAC of 11 July 1997.

28. According to the first paragraph of Article 1 of Protocol No. 1,

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

(...)”

29. The Government maintain that on 20 May 1998 the competent regional administration paid to the applicant the sums due. The Government further observe that the present application concerns essentially the recalculation of the applicant's pension, i.e. the merits of the controversy before the national courts, which, as such, falls outside the court's competence. Therefore, according to the Government the Court has erroneously declared the application admissible.

30. The applicant argues that the two payments effected in 1998 and 1999 still correspond only to a fraction of the sums he is entitled to.

31. The Court first recalls that a debt can constitute a “possession” for the creditor under Article 1 of Protocol No. 1, including the case where the credit arises from the finding by a national court that an individual is entitled to a certain sum (see e.g. No. 15488/89, Dec. 27.2.95, D.R. 80, pp.14, 23).

32. The Court then underlines that the present complaint does not concern, as the Government maintain, the merits of the controversy related to Law No. 41/1985, which has already been settled by the Court of Audit's judgment of 23 November 1993, but rather the authorities' failure to enforce this judgment in which the Court of Audit granted the applicant an increase

of pension, which constitutes a “possession” within the meaning of Article 1 of Protocol No. 1.

33. The Court notes that the sums actually paid to the applicant correspond only partly to what he is entitled to.

34. In the first place, it appears, contrary to the Government's allegation, that the first payment of 20 May 1998 was less than the sum to which the applicant was entitled, since the facts show that a subsequent payment was effected on 21 June 1999. The Court notes in this context that a few months after the first payment, the Presidency of the Sicily region had urged on the competent regional administration to speed up the compliance with a series of judgments favourable to the applicant, including the one at issue (paragraph 15 above).

35. In the second place, the Government did not dispute the applicant's allegation that he is still entitled to receive the remaining sum of 5 976 400 ITL (paragraph 16 above).

36. In the light of the foregoing, the Court considers that the fact that the Sicily Regional Administration still owes the applicant a sum he is legitimately entitled to by virtue of a final court decision, amounts to an unjustified interference with the applicant's right to peaceful enjoyment of his possessions (see *Georgiadis v. Greece*, no. 41209/98, §§ 31-33). There has, therefore, been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claims in the first place the sum he is entitled to, i.e. 5 976 400 ITL, plus its reassessment on the basis of legal interest as from 31 December 2000.

39. He also claims the global sum of 10 000 000 ITL for moral damage, arising from both violations.

40. The Government insist on the fact that the present application concerns essentially the length of the proceedings related to application No. 1025/94. In this respect, they denied that there was any causal relationship between any pecuniary damage and the alleged breach of the Convention. With regard to non-pecuniary damage, they submitted that a finding of violation (if any) would represent sufficient satisfaction.

41. The Court considers that the sum the applicant is still entitled to receive clearly constitutes a pecuniary damage he has suffered from the violation of Article 1 of Protocol No. 1. The Court therefore grants the applicant the sum of 5 976 400, minus the amount due as income tax, plus the reassessment of the net sum on the basis of the legal interest, from 1 January 2001 until the date of the delivery of the present judgment.

42. As to non-pecuniary damage, the Court considers that the applicant has certainly suffered a non-pecuniary damage due both to the excessive length of the proceedings related to application 1025/94 and to the inconveniences caused by the repeated steps he has been obliged to take in order to oblige the regional administration to comply with the Court of Audit's judgment of 23 November 1993 and with the RAC judgment of 11 July 1997. The sum claimed by the applicant in this respect appears reasonable and covers adequately both violations.

B. Costs and expenses

43. The applicant claims in the first place 3 198 798 ITL in relation to costs and expenses incurred before the RAC to obtain compliance with the decision of the Court of Audit of 23 November 1993 and that the RAC has offset between the parties.

44. He also seeks reimbursement of the legal costs for the proceedings before the Commission and the Court. In that connection he claims 4 135 546 ITL. The applicant's lawyer has requested that such fees be paid directly to him.

45. In support of both claims the applicant has produced detailed notes of fees and expenses.

46. The Government, who referred exclusively to the alleged breach of Article 6 § 1, invited the Court to dismiss the first part of this claim on the grounds that the applicant would have had to pay the sums in question regardless of the length of the proceedings. For the rest, they relied on the discretion of the Court.

47. With regard to the costs of the proceedings in the domestic courts, the Court observes firstly that for an award to be made it has to be satisfied that the costs and expenses were actually incurred, were necessarily incurred and were also reasonable as to quantum (see, among other authorities, the *Zimmermann and Steiner v. Switzerland* judgment of 13 July 1983, Series A no. 66, § 36). The Court considers that the legal expenses before the domestic courts were incurred with the aim of having the violation of Article 1 of Protocol No. 1 removed. In fact, the proceedings before the RAC, which later led to the judgment of 11 July 1997 and to which the applicant's claim refers, aimed at obtaining the pension increase to which the applicant was entitled. Despite the fact that the above judgment was in the applicant's favour, the costs were offset and

the applicant has thus been obliged to sustain them entirely. The Court grants the applicant the sum he has claimed in this respect.

48. As to the costs incurred before the Convention organs, the Court finds the amount claimed reasonable and substantiated. In the light of its practice in this sphere, the Court decides to award the applicant's lawyer, in accordance with his request (see *Scozzari and Giunta v. Italy*, nos. 39221/98 and 41963/98, § 258), the requested sum, together with any amount due by way of value-added tax or CAP (the lawyers' contingency fund).

C. Default interest

49. 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 by reason of the excessive length of the proceedings related to application No. 1025/94 ;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 due to the authorities' failure to fully implement the Court of Audit's judgment of 23 November 1993 and the Regional Administrative Court's judgment of 11 July 1997 ;
3. *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:
 - in respect of pecuniary damage, 5 976 400 (five million nine hundred seventy-six thousand and four hundred) Italian lire, minus the amount due as income tax, plus the reassessment of the net sum on the basis of legal interest, from 1 January 2001 until the date of the delivery of the present judgment ;
 - in respect of non-pecuniary damage, 10 000 000 (ten million) Italian lire;
 - for costs and expenses of the proceedings in the domestic courts, 3 198 798 (three million one hundred ninety-eight thousand seven hundred ninety-eight) Italian lire ;

(b) that the respondent State is to pay the applicant's lawyer, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 4 135 546 (four million one hundred thirty-five thousand five hundred forty-six) Italian lire for costs and expenses before the Commission and the Court, together with any value-added tax and CAP that may be chargeable ;

(c) that simple interest at an annual rate of 3.5% shall be payable from the expiry of the above-mentioned three months until settlement.

Done in English, and notified in writing on 18 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President