



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

FIRST SECTION

CASE OF BARATTELLI v. ITALY

(Application no. 38576/97)

JUDGMENT

STRASBOURG

4 July 2002

FINAL

04/10/2002

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 Barattelli v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOCHAROVA,
Mr V. ZAGREBELSKY, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 20 June 2002,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 38576/97) 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, Mr Carlo Barattelli (“the applicant”), on 19 December 1996.

2. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, assisted by their Co-Agent, Mr V. Esposito.

3. The applicant, in particular, 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 15 March 2001 the Chamber declared the application partly admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

THE FACTS

8. On 4 May 1988 the Genoa Public Prosecutor's Office informed the applicant that criminal proceedings concerning his public duties (the applicant was a civil servant in the Ministry of Public Works) had been instituted against him. These proceedings were subsequently transferred to the Milan Public Prosecutor's Office, and on 7 September 1988 the Milan investigating judge informed the applicant that a charge of corruption was pending against him.

9. On 26 May 1989 the applicant was heard by the Milan investigating judge.

10. On 31 May 1991 the applicant and forty-four other persons were committed for trial before the Milan District Court. The first hearing, initially scheduled for 27 January 1993, took place on 12 January 1994.

11. In a judgement of 31 March 1994, the District Court, following the plea bargain procedure (“*applicazione della pena su richiesta delle parti*”) sentenced the applicant to one year and four months' imprisonment. This decision was filed with the registry only on 19 March 1997. It became final on 6 July 1997.

12. In the meantime, by an order of 31 July 1995, the Ministry of Public Works dismissed the applicant from his post as a consequence of his criminal conviction.

THE LAW

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

13. The applicant maintains that the length of the proceeding in his case constituted a breach of Article 6 § 1 of the Convention, which provides:

“In the determination ... of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

14. The Government reject this allegation, on the ground that the case was complex, especially by reason of the number of accused and of the nature of the charges. They furthermore observe that the length is partly due to the fact that the case was dealt with in the transitional period after the entry into force, on 24 November 1989, of the new code of Criminal procedure. They finally note that the applicant had not been deprived of his liberty and that the delay in filing the District Court's judgement with the registry did not affect the applicant's situation, since the executive part of this judgement had been publicly read out at the hearing of 31 March 1994.

A. Period to be taken into consideration

15. The period to be taken into consideration began on 4 May 1988, date on which the applicant was informed that criminal proceedings had been instituted against him, and ended on 6 July 1997 when the Milan District Court's judgment became final.

16. It therefore lasted nine years, two months and two days for one instance.

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. The Court agrees that the case was complex. However, the Court notes that there were two periods of inactivity imputable to the State authorities: between 31 May 1991, when the applicant was committed for trial and 12 January 1994, when the first hearing took place; between 31 March 1994, when the applicant was sentenced, and 19 March 1997, when the decision of Milan District Court was filed with the registry. Even if the Court takes into account the impact on the proceeding of the modifications introduced by the new code of criminal procedure, no relevant explanation was provided by the Government for these delays which amounts to a global period of five years and seven months.

19. In these circumstances, the Court finds that a global period of nine years, two months and two days for one instance fails to satisfy the "reasonable time" requirement.

20. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. According to article 41 of the Convention,

« If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or

measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party. »

A. Damage

22. The applicant seeks 344,000,000 Italian lire, that sum being intended to cover the damage he allegedly suffered.

23. The Government maintain that the applicant has failed to adduce evidence of any pecuniary damage sustained as a result of the length of the proceedings in question. As regards non-pecuniary damage, if any, the Government submit that the finding of a violation would in itself constitute adequate just satisfaction.

24. As regards pecuniary damage, the Court agrees with the Government. However, the Court considers that the applicant did sustain some non-pecuniary damage and, making an assessment on an equitable basis, it awards him 10,000 euros.

B. Default interest

25. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

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, EUR 10,000 (ten thousands euros) in respect of non-pecuniary damage;
 - (b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President