



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

FIRST SECTION

CASE OF MUCCIACCIARO v. ITALY

(Application no. 44173/98)

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 Mucciacciaro v. Italy,

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

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 13 June 2002,

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

PROCEDURE

1. The case originated in an application (no. 44173/98) 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 Raffaele Mucciacciaro (“the applicant”), on 28 September 1998.

2. The applicant was represented by Mr V. La Brocca and S. Rando, two lawyers 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 15 March 2001 the Court declared the application 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

I. THE CIRCUMSTANCES OF THE CASE

8. On an unspecified date, criminal proceedings were instituted against the applicant for tax offences.

9. In an order of 18 September 1991, the Benevento investigating judge committed the applicant for trial, commencing on 16 December 1991 before the Benevento District Court. On 21 September 1991, this order was served on the applicant, who was thus informed of the charges brought against him.

10. The first hearing was adjourned because the applicant was ill. On 8 June 1992, at the parties' request, the District Court, acting in accordance with Article 2 § 3 of Presidential Decree n° 23 of 20 January 1992, decided to suspend the proceedings awaiting the information from the Benevento Revenue (*Ufficio Finanziario delle Imposte dirette*) on the applicant's integration into the taxpayers' list. On 29 October 1997, the District Court requested the Benevento Revenue to produce the information at issue. The information was given on 20 December 1997.

11. On 22 January 1998, the case was adjourned because on that day the lawyers of the Benevento Bar Association were on strike.

12. On 16 April 1998, the parties presented their final pleadings. The applicant and the Public Prosecutor requested the District Court to declare that the offences were time-barred.

13. By a judgment of 16 April 1998, filed with the registry on 23 April 1998, the District Court held that the charges had become time-barred in July 1997.

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 ...”

15. The Government reject this allegation, on the ground that three out of the four hearings held before the Benevento District Court were postponed for reasons regarding the applicant's personal situation. They

furthermore observe that the length is partly due to the delay in the response of the Benevento Revenue. They finally note that the applicant failed to request the District Court to schedule a new hearing and the Benevento Revenue to provide the information needed.

A. Period to be taken into consideration

16. The proceedings began at the latest on 21 September 1991, when the applicant was committed for trial, and ended on 23 April 1998, when the Benevento District Court's judgment became final.

17. They thus lasted six years, seven months and two days for one degree of jurisdiction.

B. Reasonableness of the length of the proceedings

18. 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).

19. The Court first notes that the case was not complex. As to the applicant's conduct, it observes that the first hearing was adjourned due to the illness of the applicant. As for the second hearing, the parties jointly requested the proceedings to be suspended in order to obtain a communication by the Revenue Tax. Due to a lawyers' strike, eventually, the hearing scheduled for 22 January 1998 was postponed until 16 April 1998. Even if the applicant may be considered to be responsible for some of these delays and even considering the complications which strikes may cause by overloading the list of cases to be heard by courts, the Court considers that this cannot justify the total duration of the proceedings (see, *mutatis mutandis*, the *Portington v. Greece* judgment of 23 September 1998, *Reports* 1998-VI, p. 2632, § 29; the *Zana v. Turkey* judgment of 25 November 1997, *Reports* 1997-VII, p. 2552, § 79).

20. As regards the conduct of the State's authorities, the Court observes that there is a period of inactivity imputable to the authorities dealing with the case: between 8 June 1992, when the District Court suspended the proceedings in order to acquire information on the applicant's position from the Benevento Revenue, and 29 October 1997 when the District Court sent the request for information to the latter. The information was then provided on 20 December 1997. The Government did not provide any explanation for

this delay which amounts to a period of more than five years and four months.

21. In these circumstances, the Court finds that a global period of six years, seven months and two days for one degree of jurisdiction fails to satisfy the “reasonable time” requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claims 25,000,000 Italian lire (ITL) for the non-pecuniary damage he had allegedly sustained.

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

26. 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 11,000 euros (EUR).

B. Costs and expenses

27. The applicant claims ITL 7,657,038 for legal costs and expenses incurred before the Court.

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

29. 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 (see, among other authorities, the *Bottazzi v. Italie* judgement [G.C.], n° 34884/97, § 30, CEDH 1999-V).

30. In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that EUR 2,000 is a reasonable sum and awards the applicant that amount.

C. Default interest

31. 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% 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, EUR 11,000 (eleven thousand euros) in respect of non-pecuniary damage and EUR 2,000 (two thousand euros) in respect of costs and expenses ;
 - (b) that simple interest at an annual rate of 3% 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