



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

**CASE OF PISANO v. ITALY**

*(Application no. 36732/97)*

JUDGMENT  
(Striking out)

STRASBOURG

24 October 2002

*This judgment is final but may be subject to editorial revision.*



**In the case of Pisano v. Italy,**

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,  
Mr C.L. ROZAKIS,  
Mr J.-P. COSTA,  
Mr G. RESS,  
Mr B. CONFORTI,  
Mr A. PASTOR RIDRUEJO,  
Mr L. CAFLISCH,  
Mr J. MAKARCZYK,  
Mr P. KŪRIS,  
Mrs F. TULKENS,  
Mr C. BĪRSAN,  
Mr K. JUNGWIERT,  
Mr V. BUTKEVYCH,  
Mrs N. VAJIĆ,  
Mrs H.S. GREVE,  
Mrs S. BOTOCHAROVA,  
Mr M. UGREKHELIDZE,

and also of Mr P.J. MAHONEY, *Registrar*,

Having deliberated in private on 6 December 2001 and on 28 March, 5 June and 25 September 2002,

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

**PROCEDURE**

1. The case originated in an application (no. 36732/97) 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 Massimo Pisano (“the applicant”), on 28 October 1996.

2. The applicant was represented by Mr P. Cutellè and Mr F. Cigliano, lawyers practising in Rome, and the Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and their Co-Agent, Mr V. Esposito.

3. The case concerns the applicant's complaints under Article 6 §§ 1 and 3 (d) of the Convention about the alleged unfairness of criminal proceedings against him and, in particular, the Italian courts' refusal to call a witness, Mr B., on his behalf.

4. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998, and in accordance with Article 5 § 2 thereof, the application was transmitted to the Court and assigned to the Second Section (Rule 52 § 1 of the Rules of Court). The Chamber constituted within that Section to consider the case (Rule 26) was composed of Mr C.L. Rozakis, *President*, Mr B. Conforti, Mr G. Bonello, Mr P. Lorenzen, Mr M. Fischbach, Mrs M. Tsatsa-Nikolovska and Mr E. Levits, *judges*, and also of Mr E. Fribergh, *Section Registrar*.

5. On 6 July 1999 the Chamber declared the application admissible. In a judgment of 27 July 2000 (“the Chamber judgment”) the Chamber expressed the opinion, by five votes to two, that there had been no violation of Article 6 § 1 of the Convention, taken either alone or together with Article 6 § 3 (d). The joint dissenting opinion of Judges Rozakis and Bonello was annexed to the judgment.

6. On 26 October 2000 the applicant requested that the case be referred to the Grand Chamber (Article 43 of the Convention).

7. On 13 December 2000 the panel of the Grand Chamber decided to accept his request (Rule 73).

8. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

9. On 26 February 2001 the applicant informed the Court that an application for a retrial – which he had lodged with the national courts on 30 July 1999 but which had never been brought to the Court's attention – had been allowed and that on 19 February 2001, following a new trial which had included, in particular, an examination of the witness B., the Perugia Court of Appeal had acquitted him. He also stated that an appeal on points of law against his acquittal was pending (see paragraphs 16-19 below).

10. The Court accordingly requested the parties to make submissions as to what conclusions were to be drawn under the Convention from the fact that in the course of the retrial the witness B. had given evidence, the applicant had been acquitted and an appeal on points of law was still pending. The parties were also asked to comment on the impact of the retrial on the claims for just satisfaction which the applicant had submitted to the Chamber.

11. Both parties filed memorials. They also informed the Court that the Court of Cassation had upheld the applicant's acquittal on 26 September 2001.

12. On 28 March 2002 the Grand Chamber decided that it was not necessary to hold a hearing. During the subsequent written proceedings both parties replied to each other's memorials, the applicant submitted his claims for just satisfaction and the Government filed observations on those claims.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

13. The applicant, who was born in 1960, was sentenced with final effect to life imprisonment. He was subsequently acquitted following a retrial which he had sought after he had applied to the Court.

14. The present application concerns the conduct of the initial proceedings.

#### A. Facts established in the Chamber judgment

15. In its judgment (paragraphs 6-14) the Chamber established the following facts:

“6. On 4 August 1993 the applicant's wife, Ms B., was murdered. A number of factors suggested that the murder had taken place between 11.30 a.m. and 12 noon (or, in any event, shortly before or afterwards) in the flat occupied by Ms A., with whom the applicant was having an extramarital affair.

7. Proceedings were subsequently instituted in respect of the applicant and Ms A.

Between 7 August and 8 November 1993 the applicant was interviewed four times by the Rome public prosecutor. He denied having participated in the murder and stated that on 4 August 1993 he had gone to the National Police Institute, where he worked, leaving the premises only between 10 a.m. and 11.30 a.m. in order to have some keys cut and to file certain documents at the land registry. He mentioned, in particular, that there had been a stamp missing from the file of the person in front of him in the queue at the land registry and that a discussion had ensued with a clerk. The applicant had not, however, been able to identify the person in question.

The time of the applicant's absence from the National Police Institute was subsequently confirmed in statements by his colleagues. During the trial the applicant produced a copy of the documents he had allegedly filed at the land registry on the day of the murder; the documents had been stamped with an acknowledgment of receipt.

During questioning Ms A. stated that the murder had been committed by the applicant, who had then asked her to dispose of the body.

8. On an unspecified date the applicant and Ms A. were committed for trial in the Rome Assize Court on charges of murder and concealing a body.

9. At a hearing on 28 October 1994 the applicant made a request under Article 507 of the Code of Criminal Procedure ('the CCP') to have Mr B. summoned and examined as a witness for the defence. He asserted, in particular, that Mr B. was the person who had been in front of him in the queue at the land registry on the day of the murder and would be able to confirm the events to which the applicant had referred during questioning; Mr B.'s name had not been included on the list of witnesses because his identity had only been ascertained at a later stage after a lengthy search. ...

In an order of 28 October 1994 the Rome Assize Court refused the applicant's request on the ground that the examination of Mr B. was not "absolutely necessary" (Article 507 of the CCP).

In the course of the investigation the *carabinieri* carried out a reconstruction of the events in order to establish how long it would take, in early August and in a car identical to the one owned by the applicant, to cover the twenty-three kilometres from the National Police Institute to Ms A.'s flat. It was found that the return journey could be completed in forty minutes.

10. In a judgment of 29 November 1994, the text of which was deposited at the registry on 24 December 1994, the Rome Assize Court convicted the applicant and Ms A. and sentenced them to life imprisonment. It noted that the applicant had not adduced any evidence to prove that he had in fact gone to the land registry. The documents produced bore no indication that they had been filed by the applicant himself and not by another person. ...

In its reasoning the court also stated that a number of factors established the applicant's guilt, in particular the bruises and injuries observed on his hands and legs, the accusation made against him by his co-defendant, Ms A. (*chiamata di correo*), and his numerous telephone calls and meetings with her before and after the offence had been committed.

11. The applicant appealed to the Rome Assize Court of Appeal. He complained, *inter alia*, of the refusal to call Mr B. as a witness for the defence and of the failure to investigate facts and circumstances favourable to his case.

12. In a judgment of 27 November 1995, the text of which was deposited at the registry on 6 December 1995, the Rome Assize Court of Appeal upheld the judgment given at first instance.

The court noted that the defendant had been charged as a joint principal. Consequently, it observed that it had to ascertain, firstly, whether the statements accusing him were valid and, secondly, whether there was any other evidence. It therefore had regard, in the first place, to the credible and spontaneous nature of the accusation made against the applicant by his alleged accomplice. It then considered other evidence, including the fact that the defendant had had a valid motive for killing his wife. The court also noted that the autopsy had shown that two people had participated in the murder, and concluded that the only person who could possibly have assisted Ms A. was the applicant himself, seeing that all the members of her family had an alibi. It took into account the fact that a number of bruises had been observed on the applicant's body and that their location might suggest that there had been a struggle with the victim. It also considered the telephone calls between the applicant and his accomplice – noting that no calls had been made on the day of the crime – and the meetings between the two defendants that afternoon and the following day. It also noted that the victim's brother had received an anonymous telephone call referring to information that only the applicant was likely to have known. In the court's opinion, that indicated an attempt to hinder the investigations. The court concluded that the evidence it had examined offered more than satisfactory proof that the applicant had participated in the offence. Next, it assessed the significance of the alibi given by the applicant and held:

'In the light of these unequivocal and compelling findings, no credibility can be accorded to the defendant's alibi. The court cannot but endorse the reasoning of the first-instance court, which demonstrated with the utmost precision that there was no evidence to support the defendant's submissions and that, in any event, the time of the offence was wholly consistent with the length of time during which he was absent from his place of work. ... For that reason, the defendant's applications for further evidence to be taken are irrelevant.'

13. The applicant appealed on points of law, complaining, *inter alia*, of the refusal to call Mr B. as a witness for the defence.

14. In a judgment of 18 April 1996, the text of which was deposited at the registry on 9 May 1996, the Court of Cassation, finding that the reasons given by the Assize Court of Appeal on all the issues in dispute had been cogent and correct, dismissed the applicant's appeal. It held, in particular:

'It is perfectly apparent from the Assize Court's judgment – to which the Court of Appeal's judgment refers almost in its entirety – that the defendant's alibi was taken into consideration and clearly held to be invalid, devoid of substance and, in any event, not established except for the details relating to time, which were given in vague terms.

...'

As regards the grounds of appeal challenging the courts' decision not to carry out a further examination of witnesses, the Court of Cassation held that those grounds should be dismissed:

'Indeed, the courts below gave precise reasons with regard to each issue raised, based on findings made in the course of the proceedings, on the conclusions of expert assessments – ... – and, lastly, on the serious nature of the offence and of the defendants' conduct.'

## **B. Facts subsequent to the Chamber judgment**

### *1. The retrial*

16. On 30 July 1999 the applicant applied to the Perugia Court of Appeal for a retrial. However, the Court was not informed of those proceedings until the proceedings before the Chamber had ended.

In a judgment of 19 February 2001, deposited at the registry on 1 March 2001, the Perugia Court of Appeal considered the application justified and, having re-examined the facts of the case, acquitted the applicant.

17. During the retrial the Court of Appeal had heard evidence from B., of which it gave a detailed summary in its judgment.

18. It appears from the judgment, which runs to 276 pages, that the Court of Appeal decided to acquit the applicant after considering several pieces of evidence, including the examination of B., which it summarised as

follows (see pages 41-42 of the judgment, reproduced in almost identical terms on pages 113-15 in the grounds concerning the merits of the application for a retrial):

“The next step was the examination of B. (who had never given evidence during the proceedings resulting in the conviction), an employee of the *ATAC* [Rome metropolitan transport authority], who at the material time had been thirty years old and had had a second job as a surveyor; he had often gone to the Rome land registry for files concerning registration of property.

The witness's features were similar to those which Mr Pisano had mentioned when questioned by the public prosecutor on 8 November 1993, at which point he was being held in custody and did not have the opportunity to confer with anyone else (*‘There were two people in front of me at the land registry. I remember that as I was waiting at the registration office to register certain files, the clerk realised that a person in front of me in the queue did not have a stamp on his file. The person was a young man aged between twenty-five and thirty, with short brown hair’* – see pp. 185-86 of the file on the investigation, Appendix 92). After inspecting a file (labelled ‘Primavera’ and concerning an application to change the land register) which was shown to him at the hearing, the witness stated that, as part of an occasional venture in association with a surveyor, G.S., he had completed and submitted in person, on 4 August 1993, the ‘Primavera’ file, which was assigned the registration numbers 63465/6/7/8, immediately preceding the ‘Monari’ file, which had been found in the defendant’s briefcase and was numbered 63469... He stated that he had gone to desk E, where a clerk had taken his file and handed it to the person in charge of registration.

The witness stated that, as usual, he had arrived at the land registry between about 10 a.m. and 10.30 a.m. and had queued to speak to the clerk on duty, and subsequently in the registration office; however, *‘when [he] went to retrieve [his] file, there was no stamp on the plan and [he] therefore had to retrieve it at a later stage’* (p. 92). In that respect, he confirmed the statements which the defendant had made when questioned on 8 November 1993.

The surveyor B. added that the observation that the stamp was missing had been conveyed in civilised terms, as he had acknowledged his own error, and that the surveyor G.S. had been informed and had subsequently given him the stamp to rectify the administrative error pointed out by the registration department.

He further stated that, during the previous proceedings, the surveyor G.S. had been contacted by the defendant’s brother, Mr Mario Pisano, that G.S. had put the latter in touch with him, and that he had sent a letter [to the lawyer acting on behalf of the applicant at the time] whose content was consistent with his present statements (see the document appended to the application for a retrial).

Mr B. lastly stated that he had always had short hair, that he had already started to lose his hair in 1993 and that there had been no substantial changes in his appearance. ... [pp. 41-42]”

The Court of Appeal subsequently assessed the applicant’s conduct and reached a number of logical conclusions (extracts from pages 148-227):

“Having thus far referred strictly to the contents of the case file without drawing any logical 'inferences', the court considers that it must now set forth two logical and legal considerations whose importance is far from secondary. [p. 148]

(1) ... It appears manifestly self-evident that if Mr Pisano had indeed planned and carried out the crime in Riano with the same care with which, according to the hypothesis put forward during the trial, he 'could have handed' (at what time?) the 'Trappetti' and 'Monari' files to a 'replacement', sent the latter to the land registry (a scenario which, in any event, has been ruled out by the fresh evidence) and 'possibly' (when?) obtained from him the 'provisional receipt' for the 'Monari' file ..., he would surely also have kept the receipts [proving that he went to the hardware shop], yet he threw them away. [p.149]

...

(8) Statement of grounds for dismissing the rebutting evidence adduced by the Principal Public Prosecutor and by counsel for the civil parties [p. 200]

...

All this points to the 'certainty', alluded to in abstract terms by Mr Cristiani [a lawyer acting on behalf of the civil parties], albeit for different reasons, of Mr Pisano's innocence.

That conclusion may be reached even without taking into account the corroboration of the alibi given by the defendant to prove that he had been at the Rome land registry between 10.40 a.m. and 11.15 a.m. on 4 August 1993... [p. 223]

...

Mr Monno [another lawyer acting on behalf of the civil parties] subsequently disputed whether the alibi had been corroborated.

Mr Monno, still on the subject of the alibi, drew attention to the alleged practice whereby, in order to save time at the land registry, 'provisional receipts' were drawn up several days before being issued; that 'could have happened' with the 'Monari' file, in which case the defendant 'could have sent someone else', who 'could have returned' the provisional receipt for the 'Monari' file to him at a later stage.

That hypothesis not only appears to be purely abstract, but is also unquestionably refuted by the 'fresh evidence' gathered during the retrial, namely the witness statements by B., A. and D.G. and the report by the handwriting expert, all of which offer incontrovertible proof of the following: [p. 226]

...

(3) the two 'provisional receipts' completed at 11 a.m. on 4 August 1993 when the 'Monari' file was handed in at the Rome land registry (one has remained in the office's archives while the other was found, with no signs of creases, in the briefcase taken from Mr Pisano and was first examined in the course of the present retrial at the hearing on 16 December 2000) have been confirmed as being in Mr Pisano's handwriting; even if the content of the two forms is identical, there are differences as

regards the boxes that have been ticked, which undoubtedly suggests that the defendant had not completed them earlier 'at his convenience' but did so in an uncomfortable position, leaning on his briefcase... [p. 227]"

*2. The appeal on points of law against the judgment delivered after the retrial*

19. On an unspecified date appeals on points of law were lodged against the judgment of 19 February 2001 by the Perugia public prosecutor's office and by the civil parties. On 26 September 2001 the Court of Cassation, in plenary session, dismissed the appeals, thereby upholding the Court of Appeal's decision. It held that the failure to examine B. was a further factor, among others, to take into consideration.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### **A. Examination of witnesses during the trial**

20. As regards investigations by the prosecuting authorities, Article 358 of the Code of Criminal Procedure provides that the public prosecutor "shall carry out any activities necessary for the purposes of Article 326 [investigations concerning the institution of criminal proceedings] and shall also investigate any facts or circumstances favourable to the accused".

21. Where one of the parties wishes to obtain the attendance of a witness, the party must indicate the name of the witness and the facts on which he or she is to be called to give evidence, on a list which must be submitted to the registry of the court dealing with the case, at least seven days before the date of the first hearing (Article 468 § 1 of the Code of Criminal Procedure).

22. The summoning of witnesses not so listed is governed by Article 507 of the Code of Criminal Procedure, which provides: "After the evidence has been taken, the court may, even of its own motion, direct that fresh evidence should be adduced if it considers that such a course is absolutely necessary."

### **B. Compensation for wrongful conviction**

23. Article 643 § 1 of the Code of Criminal Procedure provides:

"Anyone who has been acquitted following a retrial is entitled to compensation in an amount proportionate to the part of the sentence already served or any other period spent in detention and to the effects of the conviction on his personal and family life, provided that he did not contribute to the miscarriage of justice by means of a deliberate act or gross negligence."

## THE LAW

### I. THE GOVERNMENT'S REQUEST FOR A REVIEW OF THE DECISION OF THE PANEL OF THE GRAND CHAMBER

24. The Government asked the Grand Chamber to review the decision of the panel of five judges to accept the request for referral (see paragraph 7 above). They argued that the request did not satisfy the conditions laid down in Article 43 of the Convention, which provides:

“1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.

3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.”

In the Government's submission, the case did not raise any serious questions affecting the interpretation or application of the Convention, or indeed any serious issues of general importance. They emphasised that the applicant had not produced any evidence to suggest that it did but had merely referred to the dissenting opinion appended to the Chamber judgment. The opinion, however, was not sufficient to justify a rehearing of the case as it did not in any way call into question the manner in which Article 6 of the Convention should be construed. Lastly, the Government argued that the Grand Chamber, seeing that it had the final say about its own jurisdiction and whether it had been validly seised, was not bound by the opinion of the five judges.

25. The applicant did not make any submissions on the matter.

26. The Grand Chamber notes that neither the Convention nor the Rules of Court empower it to review a decision by the panel to accept a request for a rehearing. What is more, the terms of Article 43 § 3 of the Convention (which provides: “If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment”) make clear that once the panel has accepted a request for a rehearing, the Grand Chamber has no option but to examine the case.

27. Consequently, once the panel has noted that the case raises, or might raise, a serious question or issue within the meaning of Article 43 § 2, it is the entire “case”, in so far as it has been declared admissible, that is automatically referred to the Grand Chamber, which in principle decides the case by means of a new judgment. However, that does not mean that the Grand Chamber may not be called upon to examine, where appropriate,

issues relating to the admissibility of the application in the same manner as is possible in normal Chamber proceedings, for example by virtue of Article 35 § 4 *in fine* of the Convention (which empowers the Court to “reject any application which it considers inadmissible ... at any stage of the proceedings”), or where such issues have been joined to the merits, or where they are otherwise relevant at the merits stage (see *K. and T. v. Finland* [GC], no. 25702/94, §§ 140-41, ECHR 2001-VII).

28. The Grand Chamber may likewise be required to apply other provisions of the Convention that enable it to terminate the proceedings by a means other than a judgment on the merits, for example by approving a friendly settlement (Article 39 of the Convention) or striking the application out of the list of cases (Article 37). The principle governing proceedings before the Grand Chamber, as before the other Chambers of the Court, is that it must assess the facts as they appear at the time of its decision by applying the appropriate legal solution. Once a case is referred to it the Grand Chamber may accordingly employ the full range of judicial powers conferred on the Court.

29. It follows that the Government's request for a review of the decision of the panel of five judges must be refused.

## II. CONSEQUENCES OF THE APPLICANT'S SUBSEQUENT ACQUITTAL

30. In his application the applicant complained that the criminal proceedings instituted against him had been unfair because the trial and appeal courts had refused to call Mr B. as a witness for the defence. He alleged a violation of Article 6 §§ 1 and 3 (d) of the Convention and pursued that complaint even after being acquitted (after the delivery of the Chamber judgment) following a retrial.

31. The applicant maintained that his acquittal should not prevent the application from being examined. The acquittal had no bearing on the fact that the Italian procedure in such matters, as applied in the initial set of proceedings in his case, was incompatible with Article 6 of the Convention. Moreover, the damage he had sustained on that account had been irreversible. In that connection, he observed that the compensation to which he was entitled under Italian law did not cover the damage resulting from the violation of Article 6 of the Convention. However, after reserving the right to submit further particulars and specific claims for just satisfaction in the event of the Court's finding a violation, the applicant did not quantify his claims under Article 41 of the Convention and left the matter to the Court's discretion.

32. The Government submitted that the applicant's acquittal following the retrial meant that his application no longer raised a live issue and that he had ceased to be a “victim”. They asked the Court to declare the application

inadmissible on the ground that the applicant had failed to exhaust domestic remedies in that he had applied to the Court before the retrial proceedings had ended or, in the alternative, that, since his situation had been remedied at national level, he could no longer claim to be the victim of a violation of the rights guaranteed by the Convention. Failing that, the Government requested the Grand Chamber to confirm the judgment of the Chamber, which had held that there had been no violation of Article 6 of the Convention in the instant case, and to dismiss the applicant's claims for just satisfaction.

#### **A. The Government's preliminary objection**

33. The Court must first examine the Government's preliminary objection in which they asked the Court to declare the application inadmissible. It construes that objection as a request to apply the last sentence of Article 35 § 4 of the Convention, by which the Court may reject an application it considers inadmissible "at any stage of the proceedings".

34. That provision, which replaced former Article 29 of the Convention (see paragraph 88 of the explanatory report on Protocol No. 11, H (94) 5), allows the Court, even at the merits stage, subject to Rule 55 of the Rules of Court, to reconsider a decision to declare an application admissible where it concludes that it should have been declared inadmissible for one of the reasons given in the first three paragraphs of Article 35, including that of incompatibility with the provisions of the Convention (Article 35 § 3 taken together with Article 34). According to the Court's settled case-law, such incompatibility is present *ratione personae* if the applicant cannot or can no longer claim to be a victim of the alleged violation (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 52, ECHR 2000-VII).

35. In the instant case the Court notes, however, that both at the time when he lodged his application and at the time when the Chamber declared it admissible, the applicant was perfectly entitled to complain of the criminal proceedings in which he had been sentenced to life imprisonment without evidence being heard from a defence witness whom he regarded as crucial. His conviction had become final as he had exhausted all the remedies available in domestic law for the submission of arguments concerning the failure to call the witness. His complaints to the Court on that account under Article 6 §§ 1 and 3 (d) of the Convention were not manifestly ill-founded, as the Chamber held in its decision of 6 July 1999 on the admissibility of the application, and the panel of the Grand Chamber subsequently agreed that those complaints raised serious questions affecting the interpretation or application of the Convention.

36. It is true that the applicant failed to inform the Court in good time of his application for a retrial, but, contrary to the Government's assertion, such an application was not a remedy of which he was required to avail

himself for the purposes of Article 35 § 1 of the Convention. The Court refers to its settled case-law to the effect that extraordinary proceedings of that kind are not effective remedies within the meaning of that provision (see *Kiiskinen v. Finland* (dec.), no. 26323/95, ECHR 1999-V).

37. It remains to be determined whether the application should be rejected as being incompatible *ratione personae* with the provisions of the Convention on the ground that, as a result of his acquittal with final effect after a retrial at which the witness B. gave evidence, the applicant can no longer claim to be the “victim”, within the meaning of Article 34, of a violation of the Convention. In this connection, the Court notes that, although the situation of which the applicant complained has been remedied, the Italian courts dealing with the case have not found a violation of the relevant provisions of the Convention as regards the failure to examine B. during the initial trial (see *Dalban v. Romania* [GC], no. 28114/95, §§ 41-45, ECHR 1999-VI).

38. In the absence of such an acknowledgment by the national authorities, the Court considers that it cannot, in the light of events which occurred after the initial declaration of admissibility, subsequently declare the application inadmissible and reject it pursuant to Article 35 § 4 *in fine* of the Convention on the ground that the applicant can no longer claim to be the “victim” of the alleged violation.

39. It follows that the Government's preliminary objection must be dismissed. That conclusion does not make it unnecessary for the Court to examine whether the case should be struck out of its list by reason of subsequent events, in application of the grounds set out in Article 37 of the Convention.

## **B. Application of Article 37 of the Convention**

40. The Court must therefore ascertain whether the new facts brought to its attention – namely the examination of B. during the retrial and the applicant's acquittal – may lead it to conclude that the matter has now been resolved or that, for any other reason, it is no longer justified to continue the examination of the application, and that the application may consequently be struck out of its list of cases in accordance with Article 37 § 1 of the Convention, which provides:

“The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

- (a) the applicant does not intend to pursue his application; or
- (b) the matter has been resolved; or
- (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

41. Since the applicant gave a clear indication that he intended to pursue his application, sub-paragraph (a) of Article 37 § 1 is not applicable. That does not, however, rule out the possibility of applying sub-paragraphs (b) and (c), the applicant's consent not being a prerequisite for their application (see *Akman v. Turkey* (striking out), no. 37453/97, ECHR 2001-VI).

42. In order to conclude that the matter has been resolved within the meaning of Article 37 § 1 (b) and that there is therefore no longer any objective justification for the applicant to pursue his application, the Court considers that it must examine, firstly, whether the circumstances complained of directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed. This approach reflects the structure of the Convention's supervisory machinery, which provides both for a reasoned decision or judgment as to whether the facts in issue are compatible with the requirements of the Convention (Article 45), and, if they are not, for the award of just satisfaction (Article 41).

43. The Court also points out that, as it has previously held, by Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII).

44. The Court has examined the new information brought to its attention. Having regard to the nature of that information and to the parties' observations, it considers that the matter has been resolved (Article 37 § 1 (b)).

45. Firstly, the applicant's conviction has already been quashed by means of domestic remedies and no longer has any legal force. The applicant's main complaint, concerning the refusal to examine the witness B., has also been remedied, that witness having given evidence at the retrial. Even supposing the Court were to consider the merits of the application and to find in the applicant's favour, the Committee of Ministers' supervision of the execution of the judgment could no longer pursue the aim of having the proceedings reopened in the applicant's case.

46. Secondly, under Article 41 of the Convention the purpose of awarding sums by way of just satisfaction is to provide reparation solely for damage suffered by those concerned to the extent that such events constitute a consequence of the violation that cannot otherwise be remedied (see *Scozzari and Giunta*, cited above, § 250).

47. The Court is aware that the respondent State had started enforcing the sentence in issue, which was ultimately quashed. In that respect, this case differs from *Leblon v. Belgium* (no. 34046/96, decision of 1 June 1999, unreported), in which the Court, in deciding to strike the application out of the list, considered it relevant that the decision that had been challenged and subsequently set aside had not been executed. However, it must be noted that under Article 643 § 1 of the Code of Criminal Procedure (see paragraph 23 above), the applicant may seek compensation from the respondent State for his conviction (compensation is, moreover, also required in the circumstances of the case by Article 3 of Protocol No. 7, which Italy has ratified). As regards the applicant's attempt to draw a distinction between the damage caused by his wrongful conviction and the damage resulting from the alleged violation of Article 6 of the Convention, the Court – which as yet has found no violation – considers it unlikely, even if it is not its task to interpret domestic law, that the national courts will not take into account all the circumstances of the case. In any event, the Court considers that the compensation due to the applicant as a result of his wrongful conviction is indissociable from any compensation he might claim in the event of a finding of a violation of Article 6 of the Convention.

48. Furthermore, the Court is satisfied that respect for human rights as defined in the Convention and its Protocols does not require it to continue the examination of the application (Article 37 § 1 *in fine*). As regards the applicant's argument that the Italian system for summoning witnesses is incompatible with Article 6 of the Convention, the Court notes that its task is not to examine *in abstracto* whether the Italian legal system complies with the Convention, but to establish whether there was a violation in the particular case before it.

49. Having concluded that the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention (see paragraph 44 above), the Court is dispensed from the task of determining whether it is no longer justified to continue the examination of the application for any other reason within the meaning of Article 37 § 1 (c). Furthermore, no particular reason relating to respect for human rights as defined in the Convention requires it to continue the examination of the application in accordance with Article 37 § 1 *in fine* of the Convention.

50. Consequently, the case should be struck out of the list.

### III. AWARD OF COSTS TO THE APPLICANT

51. Rule 44 § 3<sup>1</sup> of the Rules of Court provides:

“When an application has been struck out, the costs shall be at the discretion of the Court. ...”

52. When asked to make submissions on the matter, the applicant did not provide any specific information but, in his claims under Article 41 of the Convention, merely sought reimbursement of his costs, which, at the time of the Chamber's examination of his application, he had put at 15,765,000 Italian lire for each of his two representatives. The Government, for their part, maintained that no award should be made.

53. As regards the reimbursement of costs in connection with awards of just satisfaction pursuant to Article 41 of the Convention, according to the Court's well-established case-law an award can be made to an applicant in respect of costs and expenses only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V).

Moreover, the Court's assessment is made on an equitable basis as required by Article 41 of the Convention (see, as the most recent authority, *Mefteh and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, § 60, 26 July 2002).

Lastly, the applicant is required to submit itemised particulars of all claims made, together with the relevant supporting documents or vouchers, failing which his claim may be rejected in whole or in part (Rule 60 § 2).

54. The Court considers that those principles should also be observed in the application of Rule 44 § 3.

55. In the instant case, having regard to the proceedings conducted since the specific claims for reimbursement were made, to the information in its possession and to the criteria set out above, the Court considers it reasonable to award the sum of 5,000 euros for costs and expenses.

56. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points.

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1. Rule 44 § 4 as of 1 October 2002

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Refuses* the Government's request for a review of the decision of the panel of the Grand Chamber;
2. *Dismisses* the Government's plea of inadmissibility;
3. *Decides* to strike the application out of the list;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months, the sum of EUR 5,000 (five thousand euros) for costs and expenses;
  - (b) that simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 October 2002.

Luzius WILDHABER  
President

Paul MAHONEY  
Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Mr Rozakis, joined by Mr Ress, is annexed to this judgment.

L.W.  
P.J.M.

## SEPARATE OPINION OF JUDGE ROZAKIS, JOINED BY JUDGE RESS

I fully agree with the decision of the Grand Chamber to strike this application out of the list of cases as a result of the fact that the witness Mr B. was examined during the retrial of the applicant in the extraordinary proceedings that were opened at the latter's request. The only point on which I differ from the majority of the Court concerns the ground on which they have relied to come to the aforementioned conclusion: they have considered that the striking out of the case should be based on sub-paragraph (b) of paragraph 1 of Article 37 (“the matter has been resolved”), while I believe that the correct approach to this case is to strike it out of the list by applying the following sub-paragraph, (c), which allows an application to be struck out “for any other reason established by the Court...”.

My preference for the latter ground for striking out the application is founded on the following considerations: sub-paragraph (b) of paragraph 1 seems to me to constitute what one can call a *de jure* ground for striking out an application. Indeed, it refers to a situation in which an application can be struck out because the matter has been resolved. The French text is more eloquent and precise and conveys better the real meaning of this sub-paragraph: instead of referring to a “matter”, it speaks of a “*litige*” (which may be translated as “litigation” or “dispute”). In other words, the relevant sub-paragraph requires that an application may be struck out of the list of cases only if the dispute (or litigation) has previously been resolved. It goes without saying that the reference to a “matter” or to a “*litige*” concerns a dispute between a person and a State Party to the Convention over an alleged violation of a rule (or rules) of the Convention by that State.

The question which, therefore, must be answered is where a matter (a “*litige*”) is deemed to have been resolved, allowing, as a consequence, the application to be struck out. The case-law of the Strasbourg institutions has established solid principles – with only a few exceptions – according to which a dispute over an alleged violation of the Convention may be considered to have been resolved within the domestic order of a State Party in accordance with the requirements of the Convention: taking as a point of departure the way in which the Strasbourg institutions have dealt with a violation of the Convention, the case-law makes clear that there are two requirements which must be fulfilled in the event of a violation of the Convention by a State Party if a pending matter is to be resolved in a satisfactory manner: the acknowledgment of a violation, and the payment of compensation for any damage resulting from the violation.

In the circumstances of this case the solution given is a *de facto* solution: the failure to examine the witness B., which was at the root of the applicant's complaint, was remedied by the extraordinary proceedings

instituted by him. Yet the domestic court, although it indirectly admitted the deficiencies of the previous proceedings by examining the witness, and in the end acquitted the applicant, never acknowledged that there had been a violation of the Convention by the courts that had previously dealt with the case, and did not consider compensating the applicant for the damage (pecuniary and non-pecuniary) that he might have suffered because of the previous courts' omission.

Under these circumstances, I readily accept that it is difficult for the Court to continue the examination of the case, but I consider that the ground for rejecting a further examination of the case is not sub-paragraph (b), with its rigid requirements, but sub-paragraph (c), which offers a wider and more versatile ground for striking an application out of the list of cases.