



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

FOURTH SECTION

**CASE OF PISANIELLO AND 3 OTHERS v. ITALY**

*(Application no. 45290/99)*

JUDGMENT

STRASBOURG

5 November 2002

**FINAL**

*05/02/2003*

*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 Pisaniello and 3 Others v. Italy,**

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr A. PASTOR RIDRUEJO,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr V. ZAGREBELSKY,

Mr S. PAVLOVSCHI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 15 October 2002,

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

**PROCEDURE**

1. The case originated in an application (no. 45290/99) against Italy lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Italian nationals, Mr Augusto Pisaniello, Mr Rezziero Pisaniello, Mr Giovanni Clemente and Mr Costantino Iollo ("the applicants"), on 9 December 1998.

2. The applicants were represented by Mr A. Lombardi, a lawyer 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 applicants complained under Article 6 § 1 of the Convention about the length of a set of criminal proceedings.

4. 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.

5. By a decision of 21 October 1999 the Court declared the application admissible.

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

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born respectively in 1953, 1940, 1950 and 1961. The first, third and fourth applicants are residing in San Martino Valle Caudina (Avellino), while the second applicant is residing in Rozzano (Milan). In 1988, the fourth applicant was a member of the San Martino Valle Caudina Town Council's technical Committee (*Commissione tecnica comunale*), a body responsible for expressing opinions on the issuing of building permits and on the granting of public subsidies.

8. On 23 October 1993 the Avellino Public Prosecutor's Office commenced criminal proceedings against the applicants.

9. On 19 November 1993 the Avellino Public Prosecutor requested that the applicants and three other persons be committed for trial on charges of aggravated abuse of public authority (*abuso d'ufficio*). In particular, the first, second and third applicants were accused of having induced the fourth applicant and two other persons to unlawfully grant them a public subsidy. MM. Augusto and Rezziero Pisaniello, Giovanni Clemente and another person were moreover accused of having built a cottage without complying with the conditions contained in the building permit.

10. By an act filed with the Registry on 21 March 1994, the Avellino investigating judge scheduled the date of the preliminary hearing for 26 April 1994. This act, together with the Public Prosecutor's request, was served on the second applicant on 29 March 1994 and on the other applicants on 7 April 1994. They were thus informed of the charges brought against them.

11. The preliminary hearing was adjourned first until 5 July 1994, then until 18 October 1994. On that occasion, the case was adjourned until 17 January 1995 by reason of the absence of an expert summoned to appear on the Public Prosecutor's behalf.

12. On 17 January, 23 February, 6 April and 22 June 1995 the proceedings were adjourned because the lawyers of the Avellino Bar Association were on strike from 13 January until 9 October 1995. On 26 October 1995 the case was postponed in order to enable the said lawyers to take part in an assembly.

13. The subsequent hearing was fixed at 21 June 1996. On that date the investigating judge observed that the order fixing the date of hearing had not been served on all the parties and therefore adjourned the proceedings until 23 July 1996, the date on which an expert was examined and the parties presented their pleadings.

14. In a judgment of the same day, the Avellino investigating judge declared that the charge concerning the failure to comply with the

conditions in the building permit was time-barred. This decision became final on 1 October 1996.

15. In a separate order given on 23 July 1996, the investigating judge committed the applicants and one other person for trial, commencing on 16 January 1997, before the Avellino District Court, with respect to the charge of aggravated abuse of public authority.

16. On 16 January 1997 the District Court, observing that the summons to appear had not been served on the San Martino Valle Caudina Town Council, ordered that a fresh summons be served and adjourned the proceedings until 18 June 1997. On the latter date the case was adjourned until 27 April 1998 because the lawyers of the Avellino Bar Association were on strike from 16 to 20 June 1997.

17. On 27 April 1998 the parties presented their final pleadings.

18. In a judgment of the same day, filed with the registry on 4 May 1998, the Avellino District Court held that the charge of aggravated abuse of public authority had become time-barred on 13 June 1996. This decision became final on 14 June 1998.

## THE LAW

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

19. The applicants complain about the length of the criminal proceedings against them. They allege 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

20. The proceedings at issue began on 29 March 1994 for the second applicant and on 7 April 1994 for the other applicants, dates on which the accused were informed of the charges brought against them. They ended on 14 June 1998, when the Avellino District Court's judgment became final.

21. They thus lasted more than four years and two months for one instance.

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

22. 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 applicants 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 the *Philis v. Greece* (no. 2) judgment of 27 June 1997, *Reports of judgments and decisions* 1997-IV, p. 1083, § 35).

23. According to the applicants, 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 disputed this claim and recalled that a number of hearings were postponed by reasons concerning the applicants' counsel, namely the lawyers' strikes. They also observed that the applicants benefited from the length of the proceedings, as the Avellino District Court held that the charge of aggravated abuse of public authority had become time-barred on 13 June 1996.

24. The applicants noted that the lawyers' strikes were not particularly lengthy and could not in any case justify the periods in between individual hearings. They considered that the time-barring of the offences precluded them from proving their innocence.

25. The Court first notes that the case was of a certain complexity, notably by reason of the number of the accused and the nature of the charges, which demanded the appointment of an expert. It furthermore observes that on 26 October 1995 the proceedings were postponed until 21 June 1996 in order to enable the lawyers of the Avellino Bar Association to take part in an assembly, and that the hearings of 17 January, 23 February, 6 April, 22 June 1995 and 18 June 1997 were adjourned because of two lawyers' strikes. In this respect, the Court recalls that a delay in the criminal proceedings caused by a lawyers' strike cannot be attributed to the State, whereas the period of time elapsed between the end of the strike and the new hearing is to be imputed to the conduct of the authorities (see the *Portington v. Greece* judgment of 23 September 1998, *Reports* 1998-VI, p. 2633, § 33). In the present case, the Court notes that the first lawyers' strike lasted from 13 January until 9 October 1995 and that in this period four hearings were scheduled. Therefore, the resulting delays cannot be attributed to the State authorities. On the other hand, the Court observes that the second strike lasted only four days, from 16 until 20 June 1997. However, the subsequent hearing was fixed at 27 April 1998, which is more than ten months after the end of the strike. Even if the Court is not unaware of the complications which strikes may cause by overloading the list of cases to be heard by courts (see the *Papageorgiou v. Greece* judgment of 22 October 1997, *Reports* 1997-VI, p. 2291, § 48), it considers that this

delay is excessive and must be imputed, at least in part, to the State authorities.

26. Moreover, the Court notes that the preliminary hearing, initially scheduled for 26 April 1994, was adjourned first until 5 July 1994, then until 18 October 1994. The hearings of 21 June 1996 and 16 January 1997 were postponed respectively until 23 July 1996 and 18 June 1997 by reason of the authorities' failure to serve the summons to appear.

These delays amounted to a global period of less than one year. The Court is of the opinion that they were not substantial enough to affect the applicants' right to have their case heard within a "reasonable time".

27. In the light of the above, and having regard in particular to the delays due to the lawyers' strikes and to the complexity of the case, the Court considers that the overall duration of the procedure was not excessive. There has accordingly been no violation of Article 6 § 1 of the Convention.

#### FOR THESE REASONS, THE COURT

*Holds* by five votes to two that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 5 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mrs V. Strážnická is annexed to this judgment.

N.B.  
M.OB.

## DISSENTING OPINION OF JUDGE STRÁŽNICKÁ

## JOINED BY JUDGE SIR NICOLAS BRATZA

I have voted against the finding that there was no violation of Article 6 § 1 in the present case. Although the case is on the borderline, I consider that an overall length totalling 4 years and 2 months for one instance was excessive.

It is true that the case was of a certain complexity. It is true, too, that the delays which resulted from the lawyers' strikes cannot be attributed to the State authorities. However, as is noted in the judgment, while the second strike lasted for only 4 days, the subsequent hearing was fixed for a date more than 10 months after the strike had ended, a delay which, like the majority of the Court, I find to be excessive and to be imputable, at least in part, to the State authorities.

In addition, I note that the preliminary hearing, initially scheduled for 26 April 1994, was adjourned first until 5 July 1994, then until 18 October 1994. The hearings of 21 June and 16 January 1997 were postponed respectively until 23 July 1996 and 18 June 1997 by reason of the failure of the authorities to serve the summonses to appear. The Government have provided no convincing explanation for these delays, which amounted to a global period of approximately one year.

In these circumstances, I find that the proceedings were not determined within a reasonable time and that there has accordingly been a violation of Article 6 § 1 of the Convention.