



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

FIRST SECTION

CASE OF CORDOVA v. ITALY (No. 1)

(Application no. 40877/98)

JUDGMENT

STRASBOURG

30 January 2003

FINAL

30/04/2003

In the case of Cordova v. Italy (no. 1),

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,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 17 October 2002 and 23 January 2003,

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

PROCEDURE

1. The case originated in an application (no. 40877/98) 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 Agostino Cordova (“the applicant”), on 26 March 1998.

2. The applicant alleged, firstly, that the decision to quash the conviction of a parliamentarian found to have defamed him amounted to a violation of his rights of access to a court and to an effective remedy before a national authority (Articles 6 § 1 and 13 of the Convention) and, secondly, that the extent of the freedom of expression afforded to the parliamentarian in question infringed Article 14 of the Convention.

3. 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).

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.

5. 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 (Rule 52 § 1).

6. By a decision of 13 June 2002, the Chamber declared the application admissible.

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

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 17 October 2002 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr F. CRISAFULLI,

Co-Agent;

(b) *for the applicant*

Mr G. MINIERI,

Counsel.

The Court heard addresses by them.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1936 and lives in Naples.

10. In 1993 he worked as a prosecutor at the Palmi public prosecutor's office. In the exercise of his functions, he had investigated a certain Mr C. The latter had had dealings with Mr Francesco Cossiga, a former Italian President, who at the end of his term of office had become a senator for life in accordance with Article 59 § 1 of the Constitution.

11. In August 1993 Mr Cossiga sent the applicant a fax and two letters. He said he was making him a gift of the copyright in his written, telephone and oral communications with Mr C., “including for the purposes of their stage and film exploitation” (“*anche ai fini di eventuale sfruttamento teatrale e cinematografico*”), “by way of a very modest contribution towards the costs which [he would] be incurring for [his] transfer from Palmi to Naples” (“*come modestissimo contributo alle spese che Ella dovrà affrontare per il suo trasferimento da Palmi a Napoli*”). Mr Cossiga also told the applicant that he was going to send him a small wooden horse and a tricycle “for the leisure pursuits which [he] believe[d] [he was] entitled to enjoy” (“*per quegli svaghi que credo abbia diritto a concedersi*”). Mr Cossiga then actually sent the little wooden horse and the tricycle to the applicant together with a detective game called “Super Cluedo”. With the parcel came the following message: “Have fun, dear Prosecutor! Best wishes, F. Cossiga” (“*Si prenda un po' di svago, gentile Procuratore! Cordialmente F. Cossiga*”).

12. The applicant filed a complaint against Mr Cossiga, alleging that the communications and gifts described above had damaged his honour and reputation. Proceedings were then brought against Mr Cossiga for having insulted a public official.

13. On 12 July 1996 Mr Cossiga was committed for trial before the Messina District Court. On 23 June 1997 the applicant joined the proceedings as a civil party.

14. In the meantime, the President of the Senate had informed the District Court that the Parliamentary Immunities Commission (*Giunta ... delle immunità parlamentari*) proposed that the Senate should declare that the acts of which Mr Cossiga was accused were covered by the immunity provided for in Article 68 § 1 of the Constitution.

15. By a resolution of 2 July 1997 a majority in the Senate approved the Parliamentary Immunities Commission's proposal.

16. On 23 September 1997 the applicant submitted a statement to the Messina public prosecutor and District Court in which he attacked the Senate's resolution, observing that there was no discernible link between the acts of which Mr Cossiga was accused (which he submitted ought to be construed as a personal quarrel with a prosecutor) and the exercise of parliamentary functions. On that basis, the applicant alleged that the Senate, in applying Article 68 to circumstances not provided for in the Constitution, had encroached on the powers of the judiciary, and requested that the matter be referred to the Constitutional Court to resolve the conflict of State powers.

17. By a judgment on 27 September 1997, the text of which was lodged with the registry on 10 October 1997, the Messina District Court ruled that Mr Cossiga had no case to answer "pursuant to Article 68 § 1 of the Constitution".

18. The District Court observed that it was for the Senate, whose resolutions were not subject to review by the courts, to determine whether the conditions listed in Article 68 were met. Moreover, it saw no need to raise a conflict of powers, given that the Senate's decision was neither procedurally flawed nor manifestly unreasonable.

19. On 4 December 1997 the applicant requested the Messina public prosecutor to appeal against the judgment of 27 September 1997. This was intended to pave the way for a conflict of State powers to be raised subsequently before the Constitutional Court.

20. By a decision of 13 December 1997, the prosecutor rejected the applicant's request. He observed that the Constitutional Court did not have jurisdiction to quash the Senate's resolution, but only to assess whether the Senate had exercised its power in an arbitrary fashion by improperly encroaching on the powers of the courts. However, the parliamentary papers revealed that the impugned resolution was based on the following reasons:

(i) Mr Cossiga had earlier criticised the investigations conducted by the applicant in a parliamentary question;

(ii) the acts of which Mr Cossiga was accused should be construed as polite and ironic criticism of that investigation;

(iii) according to the case-law of the legislative chambers, the immunity provided for in Article 68 of the Constitution applied to any political opinion expressed by a member of Parliament which could be regarded as an outward projection of parliamentary activity in its strict sense .

21. According to the Messina public prosecutor, those reasons were neither unreasonable nor manifestly arbitrary.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The immunity enjoyed by members of Parliament

22. Article 68 § 1 of the Constitution, as amended by Constitutional Law no. 3 of 1993, which abolished the need to obtain the consent of Parliament in order to take proceedings against one of its members, reads as follows:

“Members of Parliament shall not be required to account for the opinions they express or the votes they cast in the exercise of their functions.”

23. The Constitutional Court has held that a resolution of a legislative chamber stating that the behaviour of one of its members comes within the scope of the above provision prevents any criminal or civil proceedings being brought or continued with the aim of determining the liability of the parliamentarian in question or securing reparation for the damage suffered.

24. If (usually at the request of the parliamentarian concerned) such a resolution is adopted, it may not be quashed by the courts. However, if it considers that the resolution represents an unlawful exercise of the legislative chambers' discretion, a court may raise a conflict of State powers before the Constitutional Court (see the 1988 Constitutional Court judgment no. 1150). The parties to the trial have no such right.

25. The legislative chambers have adopted a broad interpretation of Article 68 § 1, holding it to apply to opinions expressed outside Parliament, even where they are divorced from parliamentary activity as such. This broad interpretation stems from the notion that political opinions expressed outside Parliament represent an outward projection of parliamentary activity and come within the mandate given by the voters to their elected representatives.

26. When it considered the issue of conflicts of State powers raised by the courts, the Constitutional Court first confined its scrutiny to the procedural lawfulness of parliamentary resolutions. It then progressively narrowed the scope of parliamentary immunity, thereby broadening the extent of its scrutiny over the compatibility of parliamentary resolutions

with Article 68 of the Constitution. In its judgment no. 289 of 18 July 1998, it ruled that the expression “parliamentary function” (*funzione parlamentare*) could not be held to cover all the political activities of a member of the Chamber of Deputies or the Senate, because “such an interpretation ... would risk converting an immunity into a personal privilege”. It added that “it would not be right to establish any connection between a number of statements made during meetings, press conferences, television programmes ... and a parliamentary question subsequently addressed to the Minister of Justice ... To hold otherwise [would amount to acknowledging] that no parliamentarian may be held accountable for his or her statements, even if they are grossly defamatory and ... entirely divorced from parliamentary functions or activities”.

27. In its later case-law, which can now be considered well-established, the Constitutional Court held that in the case of opinions expressed outside Parliament, it had to verify whether there was any connection with parliamentary activities. In particular, there must be a substantial connection between the opinions in question and a prior parliamentary activity (see judgments nos. 10, 11, 56, 58, and 82 of 2000, nos. 137 and 289 of 2001, and nos. 50, 51, 52, 79 and 207 of 2002).

2. The civil party's right to appeal against the first-instance decision

28. Article 576 of the Code of Criminal Procedure provides:

“The civil party may challenge, via the prosecution's right of appeal, ... the acquittal judgment ... exclusively for the purpose of determining [the accused's] civil liability ...”

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

29. In their pleadings of 30 August 2002 the Government requested that the application be declared inadmissible because the applicant had failed to exhaust domestic remedies by taking civil proceedings for reparation of the damage suffered or by using the remedy provided for in Article 576 of the Code of Criminal Procedure, which would have enabled him to appeal against the judgment of the Messina District Court (see paragraph 28 above). The applicant could subsequently have asked the civil or the appellate court to raise a conflict of State powers.

30. The Government acknowledged that the Court had dismissed a similar objection at the admissibility stage. However, they disputed that decision, on the grounds that it did not take due account of developments in

the Constitutional Court's case-law on the issue, which might have persuaded the civil or the appellate court of the need to raise a conflict of powers. If such a conflict had been raised, the Constitutional Court might have quashed the Senate's resolution of 2 July 1997 and thereby remedied the applicant's situation.

31. The Court notes that, although Article 35 § 4 of the Convention allows it to reject an application that it finds inadmissible under Article 35 at any stage in the proceedings, it has held that only new information and exceptional circumstances would induce it to reconsider its dismissal of an objection which was lodged and considered at the admissibility stage (see *Cisse v. France*, no. 51346/99, § 32, ECHR 2002-III).

32. Moreover, in its decision on the admissibility of this application, the Court found that civil proceedings or an appeal within the meaning Article 576 of the Code of Criminal Procedure had no reasonable prospect of succeeding in the face of the Senate's resolution of 2 July 1997. As to the possibility of raising a conflict of State powers, the Court observed that in the Italian legal system an individual had no direct access to the Constitutional Court and that such proceedings could not therefore be construed as a remedy required to be used for the purposes Article 35 § 1 of the Convention.

33. The Court cannot see any new information in the Government's pleadings of 30 August 2002 to persuade it to reconsider the position it adopted in its decision of 13 June 2002 dismissing the objection based on the non-exhaustion of domestic remedies. The Government's request must accordingly be rejected.

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

34. The applicant complained of the unfairness of the proceedings in the Messina District Court. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. The parties' submissions

1. The applicant

35. The applicant contended that the decision of no case to answer in favour of Mr Cossiga was based on errors of law and was governed in the last resort by a resolution of the Senate, a body which could not be regarded as impartial.

36. He submitted that the Senate's resolution of 2 July 1997 was manifestly contrary to both the letter and the spirit of Article 68 § 1 of the Constitution, because it related not only to “opinions” but also to concrete acts (the sending of “gifts”), which could not as such be covered by the immunity in question. Moreover, he refused to accept that, in so far as it related to written opinions, the impugned resolution could construe offensive statements made to an individual in the context of a personal quarrel as having been made in the exercise of parliamentary functions.

37. He observed that in his case the Italian authorities had declined to raise a conflict of State powers, thus depriving him of a remedy capable of protecting the victims of defamatory statements by parliamentarians. He stressed, moreover, that only the most recent case-law of the Constitutional Court (judgments nos. 10, 11, 58 and 82 of 2000) acknowledged that the immunity provided for in Article 68 § 1 covered only those opinions connected with the exercise of parliamentary functions in the strict sense. According to him, Mr Cossiga's statements bore no relationship with his parliamentary activities but had simply been intended to offend and insult him. He submitted that to construe parliamentary immunity as covering that type of damage to reputation would be tantamount to giving members of the Senate and the Chamber of Deputies a “blanket permission to insult” (*licenza per il libero insulto*) out of personal motives.

38. The applicant further noted that the Senate's resolution of 2 July 1997, coupled with the authorities' refusal to raise a conflict of State powers, had deprived him of any possibility not only of having Mr Cossiga convicted in a criminal court but also of bringing civil proceedings for reparation of the damage suffered. Such an outcome meant that there was a total absence of judicial scrutiny of the decisions of Parliament.

2. *The Government*

39. The Government noted that the purpose of conferring immunity on members of Parliament in respect of their votes and opinions was to ensure that the representatives of the people enjoyed the greatest possible freedom of expression in the exercise of their functions, beyond the limits imposed on ordinary citizens. Any interference with that freedom ought to be out of the question.

40. That principle was moreover recognised in all parliamentary democracies and should be considered to be one of the key features of democratic systems based on the separation of powers and the rule of law. As it would be unreasonable to suppose that the High Contracting Parties wished to abolish it when they signed the Convention, its compatibility with fundamental human rights was beyond question. In that connection, the Government referred to the case-law of the Commission in *X v. Austria*, *Young v. Ireland* and *Ó'Faolain v. Ireland* (nos. 3374/67, 25646/94 and 29099/95, Commission decisions of 6 February 1969 and 17 January 1996,

unreported) and of the Court in *Fayed v. the United Kingdom* (judgment of 21 September 1994, Series A no. 294-B).

41. The Government submitted that the immunity in question, being attached to a function provided for in the Constitution, did not breach either the principle of the equality of citizens before the law or the prohibition of discrimination. Its purpose was neither to create a “privileged” class nor to allow parliamentarians to make arbitrary use of their privileges. On the contrary, it pursued the legitimate aim of allowing Parliament to debate any issue relevant to public life freely and openly without its members having to fear persecution or possible legal consequences.

42. Moreover, where there was any doubt as to the scope or applicability of the immunity, the courts could challenge the relevant resolutions of the legislative chambers before the Constitutional Court, which had jurisdiction to determine in each case whether the opinions in issue had been expressed in the exercise of parliamentary functions. In deciding whether to refer a case to the Constitutional Court, the courts would express a view, albeit by implication, on the propriety and lawfulness of the impugned resolution. In any event, the courts alone were not entitled to deprive the trial court of its power to look into the dispute.

43. In the light of the foregoing, the Government did not consider that the applicant's right of access to a court had been in any way restricted. While that right of access secured the possibility of asking a court to settle a dispute over a civil right, it did not mean that the court was obliged to steer the trial in the direction which the plaintiff wished it to take or to dismiss any preliminary issues likely to stand in the way of a decision on the merits. The applicant had been able to go to court and to bring civil proceedings as part of the prosecution of Mr Cossiga. The Messina District Court had then considered the Senate's resolution and found it to be lawful. Finally, the prosecution had found the District Court's decision to be well-founded and that there were no grounds for an appeal.

44. The Government contended that even assuming that there had been an interference with the applicant's right of access to a court, the interference was proportionate to the legitimate aim pursued, namely the freedom and spontaneity of parliamentary debate. In that connection, they observed that from 1997 onwards (see, in particular, judgments nos. 265 and 375 of 1997, no. 289 of 1998, no. 329 of 1999, nos. 10, 11, 56, 58, 82, 320 and 420 of 2000, nos. 137 and 289 of 2001, and nos. 50, 51, 52, 79 and 207 of 2002) the Constitutional Court had quashed a number of parliamentary resolutions concerning the immunity in question on the grounds that the behaviour in issue, even though it was founded on a political quarrel, did not bear any relationship with acts characteristic of parliamentary functions. Thus, the type of scrutiny exercised by the Constitutional Court over conflicts of State powers constituted an instrument for the protection of the victims of a criminal offence committed

by a member of the Chamber of Deputies or the Senate and wrongly considered by Parliament to be covered by Article 68 § 1 of the Constitution. Recent case-law showed, moreover, that the scope of parliamentary immunity was now carefully tailored to the aim pursued, because the Constitutional Court took account of the importance of providing legal protection for the fundamental rights to honour and reputation of those who considered themselves offended by the statements of a parliamentarian. In such circumstances, it would be wrong to conclude that the very essence of the right of access by individuals to a court had been impaired, where the exercise of that right had merely been regulated within the margin of appreciation which the Contracting States must enjoy in the matter.

45. The Government noted that individuals were not entitled to refer a case directly to the Constitutional Court or to oblige the trial court to do so, but could only apply for a decision to that effect. They submitted nevertheless that such a system could not be held to infringe the Convention, because conflicts of State powers served to protect the courts' role in upholding the rule of law. Moreover, as was clear from the Constitutional Court's judgment no. 76 of 2001, private individuals could intervene in its proceedings.

46. Lastly the Government submitted that, even if there had been a violation, it was simply due to a one-off malfunction of the Italian system, which normally offered sufficient safeguards and must be regarded as complying with the Convention. If the conflict of powers had been raised, the Constitutional Court would in all likelihood, in the light of its case-law, have quashed the Senate's resolution of 2 July 1997.

B. The Court's assessment

47. In its decision on the admissibility of the application, the Court found that the complaint under Article 6 of the Convention primarily raised the question of whether the applicant had been able to exercise his right of access to a court (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 17-18, §§ 35-36).

1. The existence of an interference with the applicant's right of access to a court

48. The Court notes that, according to its case-law, Article 6 § 1 secures the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters constitutes one aspect only (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3166, § 136). This right extends only to disputes (“*contestations*”) over “civil rights and obligations” which can be said, at least on arguable grounds, to be recognised under

domestic law (see, among other authorities, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 46-47, § 81, and *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, p. 16, § 36).

49. In the present case, the Court notes that the applicant, considering himself defamed by Mr Cossiga's behaviour, had lodged a complaint against him and had joined the subsequent criminal proceedings as a civil party. From that moment, those proceedings covered a civil right – namely the right to the protection of his reputation – to which the applicant could, on arguable grounds, claim to be entitled (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, p. 43, § 121).

50. The Court notes further that, by its resolution of 2 July 1997, the Senate declared that Mr Cossiga's behaviour was covered by the immunity provided for in Article 68 § 1 of the Constitution (see paragraphs 14 and 15 above), so making it impossible for any criminal or civil proceedings aimed at establishing his liability or at securing reparation for the damage suffered to be continued (see paragraph 23 above).

51. It is true that, as stated by the Government, the Messina District Court had examined the lawfulness of that resolution and, in its judgment of 27 September 1997, had found that it was neither procedurally flawed nor manifestly unreasonable (see paragraphs 17-18 above).

52. However, such an examination cannot be equated with a decision on the applicant's right to the protection of his reputation, nor can a degree of access to a court limited to the right to ask a preliminary question be considered sufficient to secure the applicant's "right to a court", having regard to the rule of law in a democratic society (see, *mutatis mutandis*, *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 58, ECHR 1999-I). In this connection, it should be borne in mind that, in order for the right of access to be effective, an individual must have a clear and practical opportunity to challenge an act interfering with his rights (see *Bellet v. France*, judgment of 4 December 1995, Series A no. 333-B, p. 42, § 36). In the present case, following the resolution of 2 July 1997 coupled with the Messina District Court's refusal to raise a conflict of State powers before the Constitutional Court, the prosecution of Mr Cossiga was abandoned and the applicant was deprived of the possibility of securing any form of reparation for his alleged damage.

53. In these circumstances, the Court considers that there has been an interference with the applicant's right of access to a court.

54. Moreover, it notes that this right is not absolute, but may be subject to implied limitations. Nonetheless, such limitations must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, they will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and

the aim sought to be achieved (see, among many other authorities, *Khalfaoui v. France*, no. 34791/97, §§ 35-36, ECHR 1999-IX, and *Papon v. France*, no. 54210/00, § 90, ECHR 2002-VII; see also a reminder of the relevant principles in *Fayed*, cited above, pp. 49-50, § 65).

2. Aim of the interference

55. The Court notes that it is a long-standing practice for States generally to confer varying degrees of immunity to parliamentarians, with the aim of allowing free speech for representatives of the people and preventing partisan complaints from interfering with parliamentary functions. In these circumstances, the Court considers that the interference in question, which was provided for in Article 68 § 1 of the Constitution, pursued legitimate aims, namely to protect free parliamentary debate and to maintain the separation of powers between the legislature and the judiciary (see *A. v. the United Kingdom*, no. 35373/97, §§ 75-77, ECHR 2002-X).

56. It remains to be determined whether the consequences for the applicant were proportionate to the legitimate aims pursued.

3. Proportionality of the interference

57. The Court must assess the contested limitation in the light of the particular circumstances of the case (see *Waite and Kennedy*, cited above, § 64). It observes in this respect that its task is not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of the Convention (see, *mutatis mutandis*, *Padovani v. Italy*, judgment of 26 February 1993, Series A no. 257-B, p. 20, § 24). In particular, it is not the Court's task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among other authorities, *Pérez de Rada Cavanilles v. Spain*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3255, § 43). The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention.

58. The Court observes that the fact that a State confers immunity on the members of its parliament may affect the protection of fundamental rights. It would be incompatible with the purpose and object of the Convention, however, if the Contracting States, by adopting a particular system of parliamentary immunity, were thereby absolved from their responsibility under the Convention in relation to parliamentary activity. It should be borne in mind that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly so of the right of access to a court in view of the prominent place held in a democratic society by the right to a fair trial (see *Aït-Mouhoub v. France*, judgment of 28 October 1998, *Reports* 1998-VIII,

p. 3227, § 52). It would not be consistent with the rule of law in a democratic society, or with the basic principle underlying Article 6 § 1 – namely that civil claims must be capable of being submitted to a judge for adjudication – if a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities on categories of persons (see *Fayed*, loc. cit.).

59. The Court reiterates that, while freedom of expression is important for everybody, it is especially so for an elected representative of the people; he or she represents the electorate, draws attention to their preoccupations and defends their interests. In a democracy, the parliament and comparable bodies are the essential fora for political debate. Very weighty reasons must be advanced to justify interfering with the freedom of expression exercised therein (see *Jerusalem v. Austria*, no. 26958/95, §§ 36 and 40, ECHR 2001-II).

60. Accordingly, parliamentary immunity cannot in principle be regarded as imposing a disproportionate restriction on the right of access to a court as embodied in Article 6 § 1. Just as the right of access to a court is an inherent part of the fair trial guarantee in that Article, so some restrictions on access must likewise be regarded as inherent, an example being those limitations generally accepted by the Contracting States as part of the doctrine of parliamentary immunity (see *A. v. the United Kingdom*, cited above, § 83, and, *mutatis mutandis*, *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 56, ECHR 2001-XI).

61. In this connection, it is worth noting that the Court has found that an immunity attaching to statements made in the course of parliamentary debates in the legislative chambers and designed to protect the interests of Parliament as a whole, as opposed to those of individual parliamentarians, was compatible with the Convention (see *A. v. the United Kingdom*, cited above, §§ 84-85).

62. However the Court notes that, in the particular circumstances of this case, Mr Cossiga's behaviour was not connected with the exercise of parliamentary functions in their strict sense. Although it emerges from the decision of the Messina public prosecutor of 13 December 1997 (see paragraph 20 above) that Mr Cossiga had criticised the applicant's investigations in an earlier parliamentary question, the Court considers that ironic or derisive letters accompanied by toys personally addressed to a prosecutor cannot, by their very nature, be construed as falling within the scope of parliamentary functions. Such behaviour is more consistent with a personal quarrel. In such circumstances, it would not be right to deny someone access to a court purely on the basis that the quarrel might be political in nature or connected with political activities.

63. The Court takes the view that the lack of any clear connection with a parliamentary activity requires it to adopt a narrow interpretation of the

concept of proportionality between the aim sought to be achieved and the means employed. This is particularly so where the restrictions on the right of access stem from the resolution of a political body. To hold otherwise would amount to restricting in a manner incompatible with Article 6 § 1 of the Convention the right of individuals to have access to a court whenever the allegedly defamatory statements have been made by a parliamentarian.

64. The Court therefore considers that in this case the decisions that Mr Cossiga had no case to answer and that no further proceedings could be brought to secure the protection of the applicant's reputation did not strike a fair balance between the requirements of the general interest of the community and the need to safeguard the fundamental rights of individuals.

65. The Court also attaches some significance to the fact that the Senate's resolution of 2 July 1997 left the applicant with no reasonable alternative means of effectively protecting his Convention rights (see, by converse implication, *Waite and Kennedy*, cited above, §§ 68-70, and *A. v. the United Kingdom*, cited above, § 86). The Messina District Court's refusal to raise a conflict of State powers with the Constitutional Court prevented the latter from ruling on the compatibility between the resolution in issue and the jurisdiction of the courts. In this connection it should be noted that there have since been developments in the Constitutional Court's case-law on the issue, and that it now considers it wrong for immunity to extend to statements lacking any substantial connection with prior parliamentary activities which the parliamentarian concerned could be thought to be relaying (see paragraphs 26, 27 and 44 above).

66. In the light of the foregoing, the Court finds that there has been a violation of the applicant's right of access to a court guaranteed by Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

67. The applicant submitted that the decision that Mr Cossiga had no case to answer also breached Article 13 of the Convention, which is worded as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

68. The applicant contended that the Italian system of immunities and privileges deprived him of effective legal protection. He further complained that Italian litigants were denied direct access to the Constitutional Court.

69. The Government submitted that the Article 13 complaint had to be regarded as absorbed by the complaint under Article 6 § 1. In any event, with reference to the arguments advanced in relation to the right of access to a court, they contended that there had been no violation of Article 13. They

observed that Article 13 could not be construed as requiring a State to provide an appeal against the final decisions of the courts or to grant litigants direct access to the Constitutional Court.

70. The Court notes that the applicant's complaint under Article 13 is based on the same facts as were reviewed under Article 6 § 1 of the Convention. Moreover, it should be remembered that where an issue of access to a court arises, the requirements of Article 13 are absorbed by those of Article 6 (see *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, Reports 1997-VIII, p. 2957, § 41).

71. The Court therefore sees no need to examine whether there has been a violation of Article 13 of the Convention (see *Posti and Rahko v. Finland*, no. 27824/95, § 89, ECHR 2002-VII).

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

72. The applicant submitted that his fundamental rights to honour and reputation had been infringed by the fact that Mr Cossiga, in his capacity as a member of Parliament, had been allowed a much wider freedom of expression than that usually reserved for other citizens. He relied on Article 14 of the Convention, which is worded as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

73. The applicant submitted that the immunity wrongly afforded Mr Cossiga amounted to a serious instance of discrimination before the law, which converted an immunity into an unjustified privilege. He claimed to be a “victim” of that state of affairs in that, his right to honour having been breached, he had been unable to obtain redress from the national courts.

74. The Government observed that parliamentarians were not in a situation comparable to that of the general public and that the scope of the freedom of expression they enjoyed was justified by the need to protect freedom of parliamentary debate. In any event, they contended that the applicant could not be regarded as the victim of a form of “discrimination” which applied to the public at large.

75. The Court considers, in the light of its finding under Article 6 § 1 of the Convention (see paragraph 66 above) that it is not necessary to examine the applicant's complaint under Article 14 of the Convention separately.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed to have sustained non-pecuniary damage and sought an amount of not less than 50,000 euros (EUR).

78. The Government submitted that a judgment finding that there had been a violation of the Convention would in itself constitute sufficient just satisfaction.

79. The Court finds that the applicant sustained undeniable non-pecuniary damage. Taking into account the various relevant circumstances and making an assessment on an equitable basis in accordance with Article 41 of the Convention, it awards him EUR 8,000.

B. Costs and expenses

80. On the basis of a fee note, the applicant claimed the reimbursement of EUR 8,745 in respect of costs incurred before the Commission and the Court.

81. The Government left the matter to the Court's discretion.

82. The Court finds that the applicant should be awarded the amount of EUR 8,745 he has claimed for the proceedings before the Commission and the Court.

C. Default interest

83. 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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is unnecessary to examine whether there has been a violation of Article 13 of the Convention;

4. *Holds* that it is unnecessary to examine whether there has been a violation of Article 14 of the Convention;
5. *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 8,000 (eight thousand euros) in respect of non-pecuniary damage and EUR 8,745 (eight thousand seven hundred and forty-five euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period to which shall be added three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 30 January 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President