



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

SECOND SECTION

CASE OF BERTUZZI v. FRANCE

(Application no. 36378/97)

JUDGMENT

STRASBOURG

13 February 2003

FINAL

21/05/2003

In the case of Bertuzzi v. France,

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

Mr A.B. BAKA, *President*,

Mr J.-P. COSTA,

Mr GAUKUR JÖRUNDSSON,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI, *judges*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 16 April 2002 and 28 January 2003,

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

PROCEDURE

1. The case originated in an application (no. 36378/97) against the French 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 a French national, Mr Rémi Bertuzzi (“the applicant”), on 10 February 1997.

2. The applicant, who was granted legal aid, was represented before the Court by Ms C. Boye, of the Nancy Bar. The French Government (“the Government”) were represented by Mrs M. Dubrocard, Head of the Human Rights Section, Ministry of Foreign Affairs.

3. The applicant alleged, in particular, a violation of Article 6 §§ 1 and 3 of the Convention in that he had been unable to obtain legal representation under the legal-aid scheme to bring proceedings against a lawyer.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. It was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber which would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

7. By a decision of 16 April 2002 the Chamber declared the application partly admissible.

8. The applicant and the Government each filed written observations on the merits of the case (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, Mr Rémi Bertuzzi, was born in 1951 and lives in Saint-Laurent (*département* of Vosges).

10. He applied to the Metz *tribunal de grande instance* for legal aid to bring an action in damages against Mr T., a lawyer, for failing to represent him properly in court proceedings. He was granted full legal aid on 1 June 1995.

11. Three lawyers were assigned in turn by the president of the bar council to represent the applicant under the legal-aid scheme, but they applied for permission to withdraw from the case, owing to personal links with the lawyer the applicant wished to sue. The last of them withdrew from the case in late October or early November 1995.

12. On 23 November 1995 the applicant asked the president of the legal-aid office to assign a fourth lawyer. On 27 November 1995 he made a like request to the president of the bar council. The registry of the legal-aid office forwarded the applicant's letter to a lawyer who had been delegated by the bar council to the legal-aid office.

13. On 12 December 1995 that lawyer wrote to the president of the bar council in Metz to request the appointment of a fourth lawyer. The latter took no immediate action on the request, other than to seek information about the nature of the applicant's case, which he was given.

14. In the absence of a reply, the applicant wrote to the Minister of Justice on 14 June 1996. All he received in reply was a letter which arrived on 21 June 1996 informing him that his request had been transferred to the Director of the Civil Affairs Department. The applicant pointed this out in a letter to the minister dated 23 November 1996.

15. In March 1997 the applicant received a reply from the president of the bar council informing him that the grant of legal aid dated 1 June 1995 had lapsed. Consequently, he was advised to make a fresh application if he wished to pursue his claim against Mr T. The applicant did not reply to that letter.

II. RELEVANT DOMESTIC LAW

16. Legal Aid Act (Law no. 91-647 of 10 July 1991):

Section 2

“Natural persons with insufficient means to enable them to assert their rights in the courts shall be eligible for legal aid. Such aid may be full or partial. ...”

Section 24

“The costs which a recipient of legal aid would have had to bear if he or she had not been granted legal aid shall be borne by the State. ...”

Section 25

“Recipients of legal aid shall be entitled to the assistance of a lawyer and of any other member of the legal profession whose services are required in the proceedings.

The lawyers and other members of the legal profession shall be chosen by the recipient of legal aid. They may also be chosen by the officer of the court initially chosen or assigned to the case.

If the recipient of legal aid fails to make a choice or if an officer of the court who has been chosen refuses to act, the lawyer or other member of the legal profession shall be assigned to the case by the president of the bar council or the president of his or her professional regulatory body, without prejudice to the rules governing official appointments or assignments.

An officer of the court who was acting for the recipient of legal aid before such aid was granted must continue to do so. He or she may only be released from acting in exceptional circumstances and under the conditions laid down by the president of the bar council or the president of his or her professional regulatory body.”

Decree no. 91-1266 of 19 December 1991 implementing the Legal Aid Act:

Article 33

(as amended by Article 8 of Decree no. 2001-512 of 14 June 2001,
Official Gazette of 15 June 2001)

“Applications for legal aid shall be lodged with or sent by the applicant or his or her representative to the legal-aid office.

They shall contain the following information:

(1) the last name, first names, occupation, nationality and domicile of the applicant or, if the applicant is a juristic person, its name, form, object and registered office;

(2) as applicable:

(i) the nature of the claim and a brief summary of the grounds;

(ii) a summary of the existing dispute, the identity of the parties and the nature of the proposed settlement before action;

...”

Article 35

“The statement of means referred to in Article 34 shall contain:

(1) details of the applicant's family and professional situation;

(2) a full detailed list of all means of any kind directly or indirectly available to or at the free disposal of the applicant during the past calendar year and, if applicable, the year in which the application is made, other than the family benefits and social benefits referred to in Article 2, and of the means of his or her spouse and, if applicable, other people habitually living in his or her home and any dependants;

(3) the nature and value of his or her movable and immovable assets, including non-income producing assets;

(4) details of the outward signs of his or her lifestyle.

Unless the applicant is not habitually resident in France, the statement shall be made on a printed form conforming to the models specified in a joint order of the Minister of Justice and the Minister for the Budget. It shall contain a statement of the criminal-law provisions set out in paragraph II of section 22 of Law no. 68-690 of 31 July 1968.”

Article 54

“A grant of legal aid shall lapse if the applicant fails to bring the court proceedings for which it was granted within one year after being notified of the grant.”

Article 76

“If the applicant for legal aid fails to produce a document establishing that a lawyer or other member of the legal profession chosen by him or her has agreed to act, the duly appointed member of the office or section representing the relevant profession may proceed to assign an officer of the court to the case.”

Article 77

“For the purposes of the preceding Article, a lawyer appointed as a member of the office or section must be in possession of an authority issued by the president of his or her bar. ...”

Article 79

(as amended by Article 24 of Decree no. 2001-512 of 14 June 2001,
Official Gazette of 15 June 2001)

“If no lawyer or other member of the legal profession has been chosen by the recipient of legal aid or assigned in accordance with Articles 76 to 78, the secretary of the legal-aid office or section shall, immediately after the decision to grant legal aid has been taken, send a copy to the president of the bar council and, if appropriate, the president of each of the professional regulatory bodies of the various officers of the court qualified to represent the recipient of legal aid, to assist him or her and to perform such acts and take such steps as may be necessary in the substantive proceedings, or in any interlocutory application or enforcement proceedings for which the legal aid was granted.

If it appears necessary to instruct a new lawyer or other member of the legal profession after legal aid has been granted, the secretary of the legal-aid office or section shall, on an application by the recipient of legal aid, send a copy of the decision to the president of the bar council and the president of each of the professional regulatory bodies referred to in the preceding sub-paragraph.”

Article 82

(as amended by the Article 25 of Decree no. 2001-512 of 14 June 2001,
Official Gazette of 15 June 2001)

“The president of the bar council or of the professional regulatory body or his or her representative shall appoint the lawyer or other member of the legal profession who will act for the recipient of legal aid.

He or she shall notify the following of his or her appointment:

- (1) the lawyer or other member of the legal profession concerned, to whom he or she will forward a copy of the legal-aid office's decision with a reminder of the provisions of Article 54;
 - (2) the secretary of the legal-aid office, who will immediately inform the recipient of legal aid and invite him or her to contact the officer of the court concerned, and the senior clerk or secretary of any court or tribunal before which the litigation is pending; the name of the officer of the court shall then be recorded in the case file;
- ...”

Article 83

“If the officer of the court who was acting for the recipient of legal aid before legal aid was granted applies for permission to withdraw from the case, the president of the bar council or of the relevant professional regulatory body shall decide that application in a reasoned decision in accordance with the provisions set out in the fourth sub-paragraph of section 25 of the aforementioned Law of 10 July 1991.

The decision will be served on the recipient of legal aid, the officer or officers of the court and the secretary of the legal-aid office.”

Article 84

“In any case in which an officer of the court who was acting for the recipient of legal aid is released from his duty to act, a replacement shall be appointed immediately.”

Judicature Code (legislative section):

Article L781-1

“The State shall be under an obligation to compensate for damage caused by any malfunctioning of the system of justice. This liability shall be incurred only in respect of gross negligence or a denial of justice. ...”

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

17. In observations sent to the Court after the adoption of the admissibility decision, the Government renewed their objection of a failure to exhaust domestic remedies which the Court had dismissed in these terms: “The applicant, who of course did not have the benefit of legal advice, cannot be expected to be know all the finer points of judicial or disciplinary proceedings against a president of the bar council.” The Government said that the Legal Aid Act of 10 July 1991 contained a number of provisions on “aids to making the law accessible”, which included “aid for advice and assistance in non-judicial proceedings”, adding that legal advice was available from practitioners. They submitted in conclusion that it would have been perfectly possible for the applicant to find out what legal remedies were available to him.

18. The Court notes that the Government have renewed the preliminary objection which the Court examined and dismissed in its admissibility decision of 16 April 2002. It finds that there are no new factors that would warrant a re-examination of that objection.

19. It consequently dismisses the Government's preliminary objection.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

20. The applicant maintained that there had been a violation of Article 6 §§ 1 and 3 of the Convention because he had been unable to obtain representation by a lawyer under the legal-aid scheme.

21. The Government referred primarily to *Airey v. Ireland* (judgment of 9 October 1979, Series A no. 32). They said that contrary to what the Court

had found to be the position in that case, the proceedings the applicant wished to take were straightforward and no legal representation was required. The applicant could have represented himself unaided. They added that the applicant could have lodged a fresh application on being informed that the grant of legal aid had lapsed.

22. The Court notes at the outset that the applicant in the instant case wished to bring an action in damages against a lawyer. He was not, therefore, a person charged with a criminal offence. Consequently, the Court will examine his complaint solely under Article 6 § 1, the relevant parts of which read as follows:

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

23. The Court reiterates that there is no obligation under the Convention to provide legal aid for all civil disputes (see *Del Sol v. France*, no. 46800/99, § 20, ECHR 2002-II, and *Essaadi v. France*, no. 49384/99, § 30, 26 February 2002). There is a clear distinction between the terms of Article 6 § 3 (c), which guarantees the right to free legal aid under certain conditions in criminal proceedings, and of Article 6 § 1, which does not contain any reference to legal aid.

24. However, 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 the courts in view of the prominent place held in a democratic society by the right to a fair trial (see *Airey*, cited above, pp. 12-13, § 24).

25. It is therefore for the Contracting States to decide how they will comply with the obligations arising under the Convention and legal-aid systems cannot function unless there is a means of selecting the cases that should qualify for legal aid.

26. The Court notes that, in the present case, the applicant, who satisfied the means test for eligibility, was immediately granted legal aid, even though legal representation was not compulsory for the proceedings he wished to bring.

27. However, that decision remained a dead letter because the three lawyers successively assigned to his case sought permission to withdraw because of personal links with the lawyer the applicant wished to sue. In spite of his efforts, the applicant failed to get the president of the legal-aid office to assign a new lawyer to his case and was therefore unable to issue the proceedings.

28. The Government have argued that the applicant could have presented his case himself, as the proceedings did not require compulsory representation by a lawyer and were oral. They added that he ought to have made a fresh application for legal aid after being informed that the original grant had lapsed.

29. However, the Court notes in this connection that the legal-aid office had granted the applicant legal aid despite the fact that legal representation was not compulsory.

This indicates that it considered it essential for the applicant to be assisted by a qualified practitioner in the proceedings, as the proposed defendant was a lawyer.

30. As matters transpired, the applicant saw three lawyers withdraw from his case in turn and was unsuccessful in his attempts to get a lawyer assigned to his case who would actually represent him.

On being advised of the lawyers' withdrawal, the relevant authorities, the president of the bar council or his or her representative, should have arranged for a replacement who would provide the applicant with proper assistance (see, *mutatis mutandis*, *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, p. 15, § 33; the fact that *Artico* concerned proceedings of a criminal nature does not prevent the reasoning followed in that case being transposed to the present case in view of the observation made by the Court in paragraph 29 above).

In view of the stance taken by the president of the bar council and the members of the local bar, the Court considers that the applicant cannot be called to task for failing to lodge a fresh application after being informed that the grant of legal aid had lapsed.

31. It considers that permitting the applicant to represent himself in proceedings against a legal practitioner did not afford him access to a court under conditions that would secure him the effective enjoyment of equality of arms that is inherent in the concept of a fair trial (see, *mutatis mutandis*, *Airey*, cited above, pp. 12-13, § 24).

32. In conclusion, the Court finds that the applicant did not have effective access to a court. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 90,000 euros (EUR) for non-pecuniary damage, alleging that he had been wrongly sentenced to an immediate prison term and a fine of 4,000 French francs. He added that he had not

been able to carry on his profession as a commercial representative for ten years, owing to the presence of the conviction on his criminal record.

The Government observed that the sole judgment to which the applicant had referred was one dated 31 January 1995, which stated that he had been assisted by Mr Halvaleur, of the Briey Bar. Accordingly, they submitted that the applicant had not established a link between the failure to assign a lawyer to his case that had prevented him from bringing an action against Mr T. and that criminal judgment.

Accordingly, the sole damage he could claim to have sustained was the loss of an opportunity to benefit from legal assistance in bringing the action. The Government proposed the sum of EUR 1,000 euros for that damage.

The Court finds no causal link between the violation it has found and the damage alleged by the applicant. However, it considers that the applicant's inability to secure legal representation to bring his action caused him definite non-pecuniary damage. Accordingly, ruling on an equitable basis, it awards EUR 5,000 under this head.

B. Costs and expenses

35. The applicant, who was legally aided before the Court, made no claim for costs and expenses.

C. Default interest

36. 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*
 - (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 5,000 (five thousand euros) for non-pecuniary damage plus any value-added tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement 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;

4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in French, and notified in writing on 13 February 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence EARLY
Deputy Registrar

András BAKA
President