



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

FIRST SECTION

CASE OF GANCI v. ITALY

(Application no. 41576/98)

JUDGMENT

STRASBOURG

30 October 2003

FINAL

30/01/2004

In the case of Ganci v. Italy,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 9 October 2003,

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

PROCEDURE

1. The case originated in an application (no. 41576/98) 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 Domenico Ganci (“the applicant”), on 23 March 1998.

2. The applicant was represented before the Court by Mr D. La Blasca, of the Palermo Bar. The Italian Government (“the Government”) were represented by their Agent, Mr I.M. Braguglia, and by their co-Agent, Mr F. Crisafulli.

3. The applicant alleged, in particular, a violation of Article 6 of the Convention. He complained of the prison regime provided for in section 41 *bis* of the Prison Administration Act and of the delays by the court responsible for the execution of sentences in examining the appeals against the decrees of the Minister of Justice.

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

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

By a decision of 20 September 2001, the Chamber declared certain complaints inadmissible.

6. 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).

7. By a decision of 3 October 2002, the Chamber declared the remainder of the application admissible.

8. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1). The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant is an Italian national who was born in 1958. He was in Spoleto Prison when he lodged his application.

Among other measures, he was held in pre-trial detention for his involvement in the murder of Judge Falcone and his escort on 26 September 1997. He was subsequently sentenced to life imprisonment by the Caltanissetta Assize Court. On 12 November 1997 he was given a second life sentence, on other charges, by the Palermo Assize Court. That sentence became final on 26 November 1999.

10. After his arrest on 4 June 1993 the applicant was placed under the special prison regime provided for in section 41 *bis* of the Prison Administration Act, which derogates from the conditions for ordinary detention laid down in the Act.

Between 13 November 1996 and 31 December 2000 the Minister of Justice issued nine decrees, each introducing restrictions for the following six-month periods: 13 November 1996 to 13 May 1997 (decree no. 1); 13 May 1997 to 13 November 1997 (decree no. 2); 14 November 1997 to 14 May 1998 (decree no. 3); 15 May 1998 to 15 November 1998 (decree no. 4); 12 November 1998 to 12 May 1999 (decree no. 5); 11 May 1999 to 11 November 1999 (decree no. 6); 8 November 1999 to 31 December 1999 (decree no. 7); 28 December 1999 to 28 June 2000 (decree no. 8); and 23 June 2000 to 31 December 2000 (decree no. 9).

The applicant indicated that he had remained under the same regime for the period following 31 December 2000, but did not provide any precise details.

11. Decrees nos. 2 to 9 were not formal extensions of the previous decree, but fresh decisions that nonetheless reiterated the earlier decision.

12. By virtue of the nine decrees, the following restrictions were imposed on the applicant:

- (a) limits on visits by family members, with a maximum of one visit for one hour per month;
- (b) no meetings with third parties;
- (c) prohibition on using the telephone, except for one call – to be recorded – per month to members of the family if the applicant had not had a visit;
- (d) prohibition on receiving or sending out sums of money in excess of a specified amount, except for defence costs or fines;
- (e) no more than two parcels of laundry per month;
- (f) no organisation of cultural, recreational or sports activities;
- (g) no right to vote in elections for prisoners' representatives or to be elected as a representative;
- (h) no handicrafts;
- (i) no more than two hours per day to be spent outdoors.

13. The applicant appealed against those decrees to the court responsible for the execution of sentences. The parties submitted the factual information set out below.

Decree no. 1 – The applicant appealed on 2 January 1997. The Palermo court responsible for the execution of sentences held a hearing on 11 March 1997. In an order of 11 March 1997, deposited with the registry on 15 March 1997, the court declared the appeal inadmissible in accordance with the restrictive case-law followed at the time to the effect that the court hearing the case did not have power to examine the merits of the restrictions imposed.

Decree no. 2 – In an order of 29 July 1997, deposited with the registry on 31 July 1997, the Florence court responsible for the execution of sentences declared inoperative the restrictions referred to in (a), (e) and (f) of the above list.

Decree no. 3 – On an unknown date the applicant appealed to the Bologna court responsible for the execution of sentences. The court held a hearing on 27 January 1998 and dismissed the appeal in an order of the same day, which was deposited with the registry on 30 January 1998.

Decree no. 4 – The applicant appealed on 19 May 1998. On 10 October 1998 the Perugia court responsible for the execution of sentences set the case down for hearing on 12 November 1998. On 30 March 1999 the President of the court declared the appeal inadmissible. He noted that the period of validity of the decree had expired and that the applicant accordingly no longer had any interest in having it examined.

Decree no. 5 – The applicant did not appeal against this decree.

Decree no. 6 – The applicant appealed on 14 May 1999. On 9 June 1999 the rehabilitation unit of Spoleto Prison confirmed a report that had previously been made in connection with another appeal. In a request of

21 September 1999 sent to the Perugia court responsible for the execution of sentences, the applicant's lawyer asked for the appeal to be heard. On 4 December 1999 the President of the court declared the appeal inadmissible. He noted that the period of validity of the decree had expired and that the applicant accordingly no longer had any interest in having it examined.

Decree no. 7 – The applicant appealed on 12 November 1999. On 12 February 2000 the President of the Perugia court responsible for the execution of sentences declared the appeal inadmissible. He noted that the period of validity of the decree had expired and that the applicant accordingly no longer had any interest in having it examined.

Decree no. 8 – On 28 March 2000 the President of the Perugia court responsible for the execution of sentences granted the applicant legal aid. On 10 April 2000 he set the case down for hearing on 4 May 2000. In an order of the same date, deposited with the registry on 8 May, the court allowed the appeal regarding the restriction on the applicant's right to receive parcels and dismissed the remainder.

Decree no. 9 – The applicant appealed on 28 June 2000. On 8 January 2001 the President of the Perugia court responsible for the execution of sentences declared it inadmissible on the ground that the applicant no longer had any interest in having it examined since the period of validity of the decree had expired on 31 December 2000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The special prison regime

14. Section 41 *bis* of the Prison Administration Act (Law no. 354 of 26 July 1975), as amended by Law no. 356 of 7 August 1992, gives the Minister of Justice the power to suspend application of the ordinary prison regime as laid down in Law no. 354 of 1975 in whole or in part, by means of a reasoned decision that is subject to judicial review, on grounds of public order and security in cases where the ordinary prison regime would be inadequate to meet these requirements.

Such a measure can only be applied to prisoners charged with, or sentenced for, the offences mentioned in section 4 *bis* of the Act, which includes offences relating to Mafia activities.

15. Section 41 *bis* was enacted as a temporary provision. Its applicability was extended several times, until 31 December 2002 (Law no. 4 of 19 January 2001). Law no. 279 of 23 December 2002 made it into a permanent provision.

16. Section 41 *bis* does not contain a list of the restrictions that may be imposed. These must be determined by the Minister of Justice.

17. Under section 14 *ter* of the Prison Administration Act, an appeal (*reclamo*) lies to the court responsible for the execution of sentences against a decree of the Minister of Justice imposing the special regime. The appeal must be lodged within ten days from the date on which the person concerned has been served with the decree. It does not have suspensive effect. Paragraph 2 *bis* of section 41 *bis*, introduced by Law no. 11 of 7 January 1998, lays down the rules regarding territorial jurisdiction. It provides:

“The court responsible for the execution of sentences that has jurisdiction for the prison in which the prisoner, detainee or defendant is being held has power to adjudicate appeals against decrees of the Minister of Justice issued under paragraph 2. That power shall not change, even in the event of removal for one of the reasons listed in section 42.”

The court must make a decision within ten days. An appeal to the Court of Cassation lies against the decision of the court responsible for the execution of sentences.

B. Remedies available to prisoners

18. Section 35 of the aforementioned Act (Law no. 354 of 1975) governs the right of appeal of prisoners.

In judgment no. 26 of 11 February 1999, the Constitutional Court found that, regarding restrictions on rights guaranteed by the Constitution, this section was unconstitutional in so far as it did not provide for judicial protection against the restrictions imposed on prisoners. Since it could not indicate which legal avenue was available to prisoners, the Constitutional Court asked the legislature to remedy the situation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant complained of delays by the court responsible for the execution of sentences in examining the appeals lodged against the decrees of the Minister of Justice under section 41 *bis* of the Prison Administration Act. The applicant relied on Article 6 of the Convention, which reads:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

The Court notes that in four instances (decrees nos. 4, 6, 7 and 9), the appeals to the courts responsible for the execution of sentences were

declared inadmissible because the applicant no longer had any interest in obtaining a decision since the period of validity of the decrees against which he was appealing had expired, due to delays in examining the appeals.

The Court notes that it has previously found a breach of Article 13 of the Convention in a similar case (see *Messina v. Italy* (no. 2), no. 25498/94, §§ 84-97, ECHR 2000-X). However, having regard to the applicant's complaint, the Court must now examine whether that Article 6 is applicable to the case and, if so, whether the applicant's right to a court was respected.

A. Applicability of Article 6

20. The Government contended that Article 6 was inapplicable to the present case. After reiterating that Article 6 applied only to proceedings concerning the “determination of a criminal charge”, the Government submitted that the provision would not apply to proceedings before a court responsible for the execution of sentences. The role of that court was to determine disputes regarding the enforcement of sentences that had already been imposed by the court that had determined the criminal charge. Furthermore, the second paragraph of section 41 *bis* of the Prison Administration Act allowed the prison authorities, in the event of serious public-order and safety considerations linked to the fight against organised crime, to decide that prisoners sentenced for the offences listed in section 4 *bis* of the Act would be placed under a special prison regime.

21. The applicant, for his part, disputed the Government's contention. In his submission, either the court responsible for the execution of sentences was not a court – in which case there had been a wholesale breach of all human rights – or it was bound to comply with the obligations imposed by statute and the conventions and, above all, to comply with Article 6 of the Convention.

22. The Court agrees with the Government that the criminal head of Article 6 is inapplicable in the instant case: the proceedings in issue did not involve the determination of a criminal charge against the applicant.

23. However, the Court must consider whether the civil head of Article 6 is applicable, since the case did concern the “determination of civil rights and obligations”.

The Court notes that, in appealing, the applicant was contesting the lawfulness of restrictions imposed on a series of rights commonly recognised to prisoners. The issue of the applicability of Article 6 § 1 therefore arises under two heads: whether there was a dispute (“*contestatio*”) over an arguable right under domestic law, and whether or not the said right was a “civil” one.

24. As to the first condition, the Court reiterates that, in accordance with its established case-law, Article 6 § 1 of the Convention is applicable only if there is a genuine and serious “dispute” (see *Sporrong and Lönnroth v.*

Sweden, judgment of 23 September 1982, Series A no. 52, p. 30, § 81) over “civil rights and obligations”. The dispute may relate not only to the existence of a right but also to its scope and the manner of its exercise (see, *inter alia*, *Zander v. Sweden*, judgment of 25 November 1993, Series A no. 279-B, p. 38, § 22), and the outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, *inter alia*, *Masson and Van Zon v. the Netherlands*, judgment of 28 September 1995, Series A no. 327-A, p. 17, § 44, and *Fayed v. the United Kingdom*, judgment of 21 September 1994, Series A no. 294-B, pp. 45-46, § 56). Furthermore, “Article 6 § 1 extends to ‘*contestations*’ (disputes) over (civil) ‘rights’ which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether they are also protected under the Convention” (see, *inter alia*, *Editions Périscope v. France*, judgment of 26 March 1992, Series A no. 234-B, p. 64, § 35, and *Zander*, cited above).

The Court notes that, when examining the appeals against decrees nos. 2 and 8 (see paragraph 13 above), the courts allowed the applicant's requests in part. In its judgment no. 26 of 1999 (see paragraph 18 above), the Constitutional Court ruled on the need to ensure judicial protection against the restrictions imposed on prisoners.

25. With regard to the second condition, the Court notes that at least some of the serious restrictions imposed on the applicant by the decrees of the Minister of Justice – such as the one restricting his contact with his family and those affecting his pecuniary rights – clearly fell within the sphere of personal rights and were therefore civil in nature.

26. Consequently, the Court observes that Article 6 is applicable in the instant case.

B. Compliance with Article 6

27. The applicant submitted that a prisoner should be entitled to effective and not merely formal judicial protection. Consequently, the court responsible for the execution of sentences and the Court of Cassation – to which a prisoner could appeal against the decision of the first court – had to give a ruling during the period of validity of the decree in question. A prisoner, for his part, had only ten days in which to apply to each court.

28. For their part, the Government pointed out that, when ruling in respect of a similar complaint under Article 13 of the Convention, the Court had held that merely exceeding a statutory time-limit did not amount to an infringement of the right relied on (see *Messina (no. 2)*, cited above, § 94). With regard to the progress of the proceedings, the Government submitted a series of comments to the Court concerning, as the case may be, the insufficient number of judges at the relevant court or the fact that certain

posts were vacant. They also stressed the increase in the number of proceedings brought before the relevant court (decree no. 9).

29. The Court observes that an appeal without suspensive effect lies to the court responsible for the execution of sentences against decrees of the Minister of Justice imposing the special regime. The appeal must be lodged within ten days from the date on which the prisoner is served with the decree. In turn, the court must make a decision within ten days.

In the instant case, according to the information available to the Court, the applicant was the subject of at least nine decrees imposing the special regime and appealed against eight of them. In four cases no decision was given during the period of validity of the decrees (decrees nos. 4, 6, 7 and 9 – see paragraph 13 above) and, consequently, the appeals were declared inadmissible because the applicant no longer had any interest in having them heard.

30. Accordingly, the Court must determine whether, in examining the applicant's four appeals, the court respected his right to a court.

As the Government pointed out (see paragraph 28 above), the Court has acknowledged that the mere fact of exceeding a statutory time-limit does not amount to an infringement of a guaranteed right. However, in the same judgment it also held that “the time taken to hear an appeal [might] cast doubt on its effectiveness” (ibid.).

31. The Court notes at the outset that there is an essential feature in the instant case distinguishing it from *Messina (no. 2)*, cited above. In the present case the courts never ruled on the merits of the applicant's four appeals, whereas in the case of Mr Messina they did so out of time.

The Court can only conclude that the lack of any decision on the merits of the appeals nullified the effect of the courts' review of the decrees issued by the Minister of Justice.

In the Court's opinion, the applicable legislation lays down a time-limit of only ten days for adjudication partly because of the seriousness of the special regime's effects on prisoners' rights and partly because the impugned decision remains valid for only a limited time.

In these circumstances, the Court considers that the lack of a decision by the court responsible for the execution of sentences on the appeals lodged against the decrees issued by the Minister of Justice breached the applicant's right to have his case heard by a court.

Accordingly, there has been a violation of Article 6 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

32. When the application was communicated to the Government, the Court had also raised the question whether the requirements under Article 13 of the Convention – which are less strict than those under Article 6 – had been respected in the instant case. In doing so it had had

regard to its case-law in a similar case (see *Messina (no. 2)*, cited above) in which the applicant had relied on Article 13 of the Convention.

33. The Court reiterates that where a question of access to a tribunal arises, the requirements under Article 13 are absorbed by those of Article 6 (see *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2957, § 41).

34. Accordingly, having concluded that there has been a breach of Article 6 of the Convention in the present case, the Court holds that it is not necessary to examine whether there has been a breach of Article 13 (see *Posti and Rahko v. Finland*, no. 27824/95, § 89, ECHR 2002-VII).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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.”

36. The applicant claimed 1,000,000 euros. He justified his claim by referring to the suffering he and his family had endured as a result of the application of the regime under section 41 *bis*.

37. The Government alleged that there was no evidence to support the applicant's claims in respect of the pecuniary damage sustained. They submitted further that a finding of a violation could represent sufficient just satisfaction for the applicant's claim in respect of non-pecuniary damage.

38. The Court notes that there is no causal link between the violation complained of and the alleged damage. It rejects this claim.

39. The Court considers that in the circumstances of the case the finding of a violation of the Convention constitutes in itself sufficient just satisfaction (see *Messina (no. 2)*, cited above).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that Article 6 of the Convention applies in the instant case and that there has been a breach of this provision;
2. *Holds* that it is not necessary to examine whether there has been a breach of Article 13 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

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

Erik FRIBERGH
Registrar

Christos ROZAKIS
President