



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

SECOND SECTION

**CASE OF K. v. ITALY**

*(Application no. 38805/97)*

JUDGMENT

STRASBOURG

20 July 2004

**FINAL**

*15/12/2004*



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

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

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr V. ZAGREBELSKY, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 23 March and 29 June 2004,

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

## PROCEDURE

1. The case originated in an application (no. 38805/97) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Ms W.K. (“the applicant”), on 7 November 1996.

2. The Italian Government (“the Government”) were represented by successive Agents, Mr U. Leanza and Mr I.M. Braguglia, and by successive co-Agents, respectively Mr V. Esposito and Mr F. Crisafulli. The President of the Chamber acceded to the applicant’s request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged that the length of proceedings instituted in Italy pursuant to a United Nations convention for the recovery of maintenance payments from the father of her child had been unreasonable, in breach of Article 6 § 1 of the Convention.

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 Fourth Section of the Court (Rule 52 § 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). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

7. By a decision of 25 June 2002, the Chamber declared the application admissible.

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

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, a Polish citizen living in Katowice, Poland, and Mr P., an Italian citizen living in Italy, are the parents of a daughter who was born out of wedlock on 19 November 1988. The latter was registered with the registry of births, deaths and marriages as the child of the applicant and Mr P. Since the child's birth, Mr P. has not assumed any parental duties.

10. The applicant instituted proceedings against Mr P. in the Katowice District Court, claiming maintenance for her minor daughter.

On 23 June 1993 the Katowice District Court ordered the defendant *in absentia* to pay maintenance in an amount equivalent to 350 zlotys (PLN) (approximately 73 euros (EUR)) per month from 19 November 1988, plus statutory interest should he default. This decision became final on 15 July 1993.

11. Having received no payments, on 30 May 1994 the applicant sought to avail herself of the United Nations Convention on the Recovery Abroad of Maintenance of 20 June 1956. She applied to the Katowice District Court (acting as the Transmitting Agency) for the recovery of maintenance through the Italian Ministry of the Interior (acting as the Receiving Agency), as provided for by that convention.

In her request, the applicant first asked for payment of the sum due of PLN 350 per month plus default interest which, by 1 January 1994, came to a total of PLN 21,350 (approximately EUR 4,495). The applicant also requested an increase in maintenance from PLN 350 per month to PLN 650 (approximately EUR 137) per month, on the grounds that she had learnt that Mr P. was earning 3,000 United States dollars per month and that the costs of bringing up the child were constantly rising. Finally, she asked the Italian authorities to start judicial proceedings against Mr P. to execute the decision of the Katowice District Court, and to recover her court costs if Mr P. refused to comply with the judgment.

12. On 30 May 1994 the Katowice District Court sent the applicant's request to the Italian Ministry of the Interior.

13. In a letter sent to the Katowice District Court on 18 October 1994, the Ministry of the Interior confirmed that it had received the applicant's

request on 7 October 1994 and had referred it to the Prefecture of Terni. It added that, in so far as the existing decision obliged Mr P. to pay PLN 350 per month, a different amount could not be claimed. On 3 May 1996 the Ministry of the Interior sent another letter to the Katowice District Court informing it that Perugia District State Counsel had been appointed to initiate proceedings for the execution of the decision.

14. On 27 December 1996 Perugia District State Counsel informed the Ministry of the Interior that he had started these proceedings in November 1996.

15. On 27 February 1997 the Perugia Court of Appeal held a hearing at which it decided that the parties had to make their final submissions on 15 May 1997. On that date the court adjourned the case to 30 October 1997 and reserved judgment, which, by law, could not be delivered before the expiry of a period of eighty days. On 21 January 1998 the Perugia Court of Appeal declared the Katowice District Court decision enforceable in Italy. On 30 March 1999 the Ministry of the Interior invited the debtor to comply with his obligations. On 2 April 1999 the decision of the Perugia Court of Appeal became final.

16. On 2 May 2000 the Italian Ministry of the Interior asked the Polish authorities for an updated calculation of the debt, which the Polish authorities furnished on 27 September 2000.

17. On 27 November 2000 the Prefecture of Terni informed the Ministry that on 6 July 1999 and 23 October 2000 it had formally invited the debtor to pay the amounts due. As he did not do so, Perugia District State Counsel was asked on 18 December 2000 to start enforcement proceedings. The first attempt at enforcement was unsuccessful, as Mr P. had no possessions. On 20 December 2002 a new set of enforcement proceedings – started on 10 July 2002 – led to the seizure of property and a priority notice being entered in the land register. According to information submitted by the Government, Mr P.'s lawyer made an informal request to be allowed to pay the arrears in instalments, but did not file a formal request with the courts.

## II. RELEVANT INTERNATIONAL AND DOMESTIC LAW

### A. The Convention on the Recovery Abroad of Maintenance

18. The Convention on the Recovery Abroad of Maintenance was adopted and opened for signature on 20 June 1956 by the United Nations Conference on Maintenance Obligations. This conference had been convened by the Economic and Social Council of the United Nations (see United Nations, Treaty Series, 1957, pp. 4-11 and 32-47). The convention came into force on 25 May 1957. Italy and Poland ratified it on 28 July

1958 and 21 March 1968 respectively. The relevant provisions of the convention read as follows:

#### **Article 1**

“1. The purpose of [the] Convention is to facilitate the recovery of maintenance to which a person, hereinafter referred to as claimant, who is in the territory of one of the Contracting Parties, claims to be entitled from another person, hereinafter referred to as the respondent, who is subject to the jurisdiction of another Contracting Party. This purpose shall be effected through the offices of agencies, which will hereinafter be referred to as Transmitting and Receiving Agencies.

2. The remedies provided for in this Convention are in addition to, and not in substitution for, any remedies available under municipal or international law.”

#### **Article 2 §§ 1 and 2**

“1. Each Contracting Party shall, at the time when the instrument of ratification or accession is deposited, designate one or more judicial or administrative authorities, which shall act in its territory as Transmitting Agencies.

2. Each Contracting Party shall, at the time when the instrument of ratification or accession is deposited, designate a public or private body, which shall act in its territory as Receiving Agency.”

#### **Article 3 § 1**

“Where a claimant is on the territory of one Contracting Party, hereinafter referred to as the State of the claimant, and the respondent is subject to the jurisdiction of another Contracting Party, hereinafter referred to as the State of the respondent, the claimant may make application to a Transmitting Agency in the State of the claimant for the recovery of maintenance from the respondent.”

#### **Article 4 § 1**

“The Transmitting Agency shall transmit the documents to the Receiving Agency of the State of the respondent, unless satisfied that the application is not made in good faith.”

#### **Article 5 § 1**

“The Transmitting Agency shall, at the request of the claimant, transmit, under the provision of Article 4, any order, final or provisional, and any other judicial act, obtained by the claimant for the payment of maintenance in the competent tribunal of any Contracting Party, and, where necessary and possible, the record of the proceedings in which such order was made.”

### Article 6

“1. The Receiving Agency shall, subject always to the authority given by the claimant, take on behalf of the claimant, all appropriate steps for the recovery of maintenance, including the settlement of the claim and, where necessary, the institution and prosecution of an action for maintenance and the execution of any order or other judicial act for the payment of maintenance.

2. The Receiving Agency shall keep the Transmitting Agency currently informed. If it is unable to act, it shall inform the Transmitting Agency of its reason and return the documents.

3. Notwithstanding anything in this Convention, the law applicable in the determination of the questions arising in such action or proceedings shall be the law of the State of the respondent, including its private international law.”

### **B. Law no. 218 of 31 May 1995 (reform of the Italian system of private international law)**

19. Section 64 of Law no. 218 of 1995 indicates the cases in which a judgment delivered by a foreign court will be recognised in Italy without recourse to a specific procedure. Section 67 contains provisions on the execution of judgments and decisions following the voluntary assumption of jurisdiction and in cases of refusal to comply.

### **C. Law no. 89 of 24 March 2001 (the “Pinto Act”) (provision for just satisfaction on failure to comply with the “reasonable time” requirement)**

20. This Act, which came into force on 18 April 2001, completes Article 111 of the Italian Constitution, which provides that the right to have proceedings conducted within a reasonable time shall be guaranteed by legislation. The new Act enables a claim for compensation to be made in the Court of Appeal, which will apply the case-law of the European Court of Human Rights, by anyone who has sustained pecuniary or non-pecuniary damage as a result of the inordinate length of proceedings.

### **Section 2 (Entitlement to just satisfaction)**

“1. Anyone sustaining pecuniary or non-pecuniary damage as a result of a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Law no. 848 of 4 August 1955, on account of a failure to comply with the ‘reasonable time’ requirement in Article 6 § 1 of the Convention, shall be entitled to just satisfaction.

2. In determining whether there has been a violation, the court shall have regard to the complexity of the case and, in the light thereof, the conduct of the parties and of the judge deciding procedural issues, and also the conduct of any authority required to participate in or contribute to the resolution of the case.

3. The court shall assess the quantum of damage in accordance with Article 2056 of the Civil Code and shall apply the following rules:

(a) only damage attributable to the period beyond the reasonable time referred to in subsection 1 may be taken into account;

(b) in addition to the payment of a sum of money, reparation for non-pecuniary damage shall be made by giving suitable publicity to the finding of a violation.”

### **Section 3 (Procedure)**

“1. Claims for just satisfaction shall be lodged with the court of appeal in which the judge sits who has jurisdiction under Article 11 of the Code of Criminal Procedure to try cases concerning members of the judiciary sitting in the district where the case in which the violation is alleged to have occurred was decided or discontinued at the merits stage or is pending.

2. The claim shall be made on an application lodged with the registry of the court of appeal by a lawyer holding a special authority containing all the information prescribed by Article 125 of the Code of Civil Procedure.

3. The application shall be made against the Minister of Justice where the alleged violation has taken place in proceedings in the ordinary courts, the Minister of Defence where it has taken place in proceedings before the military courts and the Finance Minister where it has taken place in proceedings before the tax commissioners. In all other cases, the application shall be made against the Prime Minister.

4. The court of appeal shall hear the application in accordance with Articles 737 et seq. of the Code of Civil Procedure. The application and the order setting the case down for hearing before the relevant chamber shall be served by the applicant on the defendant authority at its elected domicile at the offices of State Counsel [*Avvocatura dello Stato*] at least fifteen days prior to the date of the hearing before the Chamber.

5. The parties may apply to the court for an order for production of all or part of the procedural and other documents from the proceedings in which the violation referred to in section 2 is alleged to have occurred and they and their lawyers shall be entitled to be heard by the court in private if they attend the hearing. The parties may lodge memorials and documents up until five days before the date set for the hearing or until expiry of the time allowed by the court of appeal for that purpose on application by the parties.

6. The court shall deliver a decision within four months after the application is lodged. An appeal shall lie to the Court of Cassation. The decision shall be enforceable immediately.

7. To the extent that resources permit, payment of compensation to those entitled shall commence on 1 January 2002.”

**Section 4**  
**(Time-limits and procedures for lodging applications)**

“A claim for just satisfaction may be lodged while the proceedings in respect of which a violation is alleged to have occurred are pending or within six months from the date when the decision ending the proceedings becomes final. Claims lodged after that date shall be time-barred.”

**Section 5**  
**(Communications)**

“If the court decides to grant an application, its decision shall be communicated by the registry to the parties, to State Counsel at the Audit Court to enable him to start an investigation into liability, and to the authorities responsible for deciding whether to institute disciplinary proceedings against the civil servants concerned by the proceedings.”

**Section 6**  
**(Transitional provisions)**

“1. Within six months [extended to twelve by Law no. 432 of 2001] after the entry into force of this Act, anyone who has lodged an application with the Court of Human Rights in due time complaining of a violation of the ‘reasonable time’ requirement contained in Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Law no. 848 of 4 August 1955, shall be entitled to lodge a claim under section 3 hereof provided that the application has not by then been declared admissible by the European Court. In such cases, the application to the court of appeal must state when the application to the said European Court was made.

2. The registry of the relevant court shall inform the Minister for Foreign Affairs without delay of any claim lodged in accordance with section 3 and within the period laid down in subsection 1 of this section.”

## THE LAW

### I. PRELIMINARY OBSERVATION

21. The Court notes that the applicant maintained that the length of the proceedings concerned had exceeded a “reasonable time” and that the respondent State was in breach of Article 6 § 1 of the Convention.

It observes in this connection that the Government have not contended at any stage of the Convention proceedings that the applicant was not within

the “jurisdiction” of Italy within the meaning of Article 1 of the Convention and that the application was therefore incompatible *ratione personae* with the provisions of the Convention.

Even though this argument has not been raised, the Court considers that it is appropriate to deal with the matter *ex officio*, having regard to its relevance to the circumstances of the case. For the Court, although the maintenance decision in the applicant’s favour was handed down by a Polish court, it must be noted that the Italian authorities, by virtue of their ratification of the United Nations Convention on the Recovery Abroad of Maintenance (see paragraph 18 above and in particular Article 6 of that instrument) undertook to assume responsibility for the enforcement of the decision. In the performance of that obligation, they were acting in an autonomous manner (see, *mutatis mutandis*, *Pellegrini v. Italy*, no. 30882/96, § 40, ECHR 2001-VIII). It further observes in this connection that the enforcement proceedings were not subject to any supervision by the Polish authorities and that the applicant could not secure redress from the latter State in the event of unreasonable delay in the enforcement of the decision.

In short, Italy’s jurisdiction is engaged under the Convention in respect of the applicant’s complaint.

## II. THE GOVERNMENT’S PRELIMINARY OBJECTIONS

### A. The pre-admissibility objections

22. The Government repeated the argument they had put forward at the admissibility stage that the application should be rejected for failure to exhaust domestic remedies as required by Article 35 § 1 of the Convention, which states:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.”

23. The Government noted that the admissibility decision seemed to rely on contradictory arguments, as the Court had decided that Article 6 of the Convention was applicable to the case while the applicant had not applied to the court of appeal in accordance with the Pinto Act.

The Government stressed that, if Article 6 was applicable, the applicant should have lodged a claim under the Pinto Act, as, under Italian law, anything that fell within the scope of Article 6 (with regard to the excessive length of proceedings) “[fell] also and automatically” within the scope of that Act. If the Pinto Act was not applicable to the proceedings, Article 6 would not apply to the present case and, consequently, the application

would be inadmissible *ratione materiae*. In conclusion, the Government requested that the application be declared inadmissible as being incompatible *ratione materiae* or dismissed for non-exhaustion of domestic remedies.

24. The applicant did not comment on this point.

25. The Court notes that the relevant principles concerning exhaustion of domestic remedies were set out in, *inter alia*, its judgment of 28 July 1999 in *Selmouni v. France* (no. 25803/94, §§ 74-77, ECHR 1999-V). The purpose of Article 35 § 1 of the Convention is to afford Contracting States an opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Convention institutions. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time.

26. As regards the application of Article 35 § 1 of the Convention to the facts of the present case, the Court notes that, at the outset, there was a dispute between the applicant and Mr P. over the payment of maintenance. However, the procedure in question did not concern that dispute, but the enforcement of a previous decision. Moreover, the applicant was not a party to the enforcement proceedings in the Italian court as, under the Convention on the Recovery Abroad of Maintenance, the Italian authorities were responsible for the recovery of the maintenance.

The Court has previously recognised that an applicant who is not a party to domestic proceedings may, in certain circumstances, be considered a “victim” (Article 34 of the Convention) provided that he or she is concerned by the decision (see *L.G.S. S.p.a. v. Italy* (no.2), no. 39487/98, §§ 13-14, 1 March 2001).

As the present application falls within the scope of Article 6, it remains to be determined whether the applicant should have applied to the court of appeal for just satisfaction.

27. The Court observes that the terms of section 1 of the Pinto Act are sufficiently broad to demonstrate the existence of a remedy in the civil courts for the undue length of proceedings. By availing themselves of this remedy, applicants may obtain a ruling as to the compatibility of the proceedings in issue with the reasonable time requirement of Article 6 § 1 of the Convention and, if appropriate, claim just satisfaction.

28. However, in the Court’s opinion, the Government have not shown that an applicant who is not a party to the domestic proceedings, albeit concerned by them, could effectively apply to the court of appeal. Moreover, it would appear that it is mainly for the Receiving Agency, within the meaning of the aforementioned United Nations convention, to enforce the special procedure in the interests of the applicant. The Court

concludes, therefore, that the applicant was exempted from the obligation to make use of the remedy suggested by the Government.

29. The Court therefore dismisses the Government's preliminary objection.

### **B. The new objection**

30. In their observations on the merits of the case, the Government submitted that, despite previous case-law to the contrary, Article 6 of the Convention did not apply to enforcement proceedings.

31. The Court would point out that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Government in their observations on the admissibility of the application. In the present case, not only did the Government not raise this matter at the admissibility stage, they also conceded that Article 6 applies to the application. Consequently, they are estopped from raising this objection at the present stage of the proceedings and their objection must be dismissed.

## **III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION**

32. The applicant maintained that the length of the proceedings concerned had exceeded a "reasonable time", in breach of Article 6 § 1 of the Convention, the relevant part of which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

33. The Government refuted that allegation.

34. The parties discussed various criteria which the Court has applied in such cases, such as the exact period to be taken into consideration, the degree of complexity of the case and the parties' conduct. The Court notes, however, that its case-law is based on the fundamental principle that the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case. In this instance, those circumstances call for a global assessment. The Court does not deem it necessary to consider the question in such detail (see, among other authorities, *Obermeier v. Austria*, judgment of 28 June 1990, Series A no. 179, pp. 23-24, § 72, and *Ferraro v. Italy*, judgment of 19 February 1991, Series A no. 197-A, pp. 9-10, § 17).

35. The Court notes that the proceedings started on 7 October 1994, when the Italian Ministry of the Interior received the applicant's request transmitted by the Katowice District Court (that being the first compulsory step for bringing the case before the Italian court).

The proceedings before the Italian court started before 27 December 1996 and the decision of the Perugia Court of Appeal became final on 2 April 1999 (see paragraph 15 above).

On 18 December 2000 Perugia District State Counsel was asked to commence enforcement proceedings. A first attempt at enforcement was unsuccessful (see paragraph 17 above).

A new set of proceedings started on 10 July 2002 (see paragraph 17 above).

The Court finds that Italy cannot be held responsible for the fact that it became necessary to institute this new set of proceedings.

The period to be taken into consideration has thus lasted at least eight and a half years.

36. The Court considers that the subject matter of the case involved some degree of complexity. However, it notes, for instance, that the Italian authorities waited until November 1996 before starting proceedings in the Perugia Court of Appeal, and from 2 April 1999 to December 2000 before starting fresh enforcement proceedings.

37. Having examined the facts of the case in the light of the parties' submissions, and having regard to its case-law, the Court considers that the length of the proceedings complained of did not globally satisfy the "reasonable time" requirement.

38. There has accordingly been a violation of Article 6 § 1 of the Convention.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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**

40. By a letter of 17 October 2002, the applicant referred to the delay in executing the judgment of the Katowice District Court. She submitted that just satisfaction should be paid by the Italian Government as a consequence.

41. The Government considered that no award should be made but submitted that, if the Court were to decide otherwise, the amount should be fixed solely on the basis of the violation of Article 6 § 1 which had been found.

42. The Court considers that the applicant suffered some non-pecuniary damage on account of the protracted length of the proceedings in her case

for which the finding of a violation does not afford sufficient compensation. In the circumstances of the instant case and making its assessment on an equitable basis, the Court awards the applicant 12,000 euros, plus any tax that may be chargeable.

### **B. Default interest**

43. 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 objections;
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 12,000 (twelve thousand euros) in respect of non-pecuniary damage, plus any 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.

Done in English, and notified in writing on 20 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President