



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

FIRST SECTION

CASE OF APICELLA v. ITALY

(Application no. 64890/01)

JUDGMENT

STRASBOURG

10 November 2004

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED JUDGMENT IN THE CASE ON
29 March 2006**

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Apicella v. Italy,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
Mr L. FERRARI BRAVO, *ad hoc judge*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 21 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 64890/01) 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, Mrs Angelina Apicella (“the applicant”), on 29 October 1998.

2. The applicant was represented by Mr S. de Nigris de Maria, a lawyer practising in Benevento. The Italian Government (“the Government”) were represented successively by their Agents, Mr U. Leanza and Mr I.M. Braguglia, and their co-Agents, Mr V. Esposito and Mr F. Crisafulli. Mr V. Zagrebelsky, the judge elected in respect of Italy, withdrew from sitting in the case (Rule 28 of the Rules of Court). The Government accordingly appointed Mr L. Ferrari Bravo to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

3. On 22 January 2004 the Court declared the application admissible.

THE FACTS

4. The applicant was born in 1962 and lives in Pesco Sannita (Benevento).

1. The principal proceedings

5. On 17 January 1992 the applicant brought proceedings in the Benevento Magistrate's Court, sitting as an employment tribunal, seeking

acknowledgement of her right to be reregistered on the lists of farmers and of her status as farm labourer. That status had been contested by the Farmers' Social Insurance Fund (*Servizio Contributi Agricoli Unificati – "the S.C.A.U."*). Her right to a maternity allowance depended on the type of employment contract she had.

6. On 22 February 1992 the magistrate's court set the case down for an initial hearing on 14 March 1994. On that day the magistrate's court requested documents relating to the records drawn up by the labour inspector and ordered them to be filed at a hearing on 8 November 1995. On that date, at the request of counsel for the defendant, the magistrate's court declared the proceedings interrupted on the ground that the S.C.A.U. had been abolished.

7. On 24 November 1995 the applicant lodged an application with the court registry for the proceedings to be resumed against the social-security department (*Istituto Nazionale di Previdenza Sociale – 'the I.N.P.S.'*). On 25 January 1996 the magistrate's court set the case down for hearing on 21 October 1997. However, that hearing was adjourned by the court of its own motion to 4 March 1999. The next three hearings, held between 8 April 1999 and 18 September 2000, were devoted to hearing evidence from witnesses. On 13 November 2000 the parties made their final submissions.

8. In a judgment of the same date, the text of which was deposited with the registry on 21 November 2000, the magistrate's court dismissed the claim.

9. On 24 April 2001 the applicant lodged an appeal with the Naples Court of Appeal. On 11 February 2001 the President of the Court of Appeal set the appeal down for hearing on 26 January 2004. On that day the Court of Appeal reserved judgment. According to information provided by the applicant on 23 March 2004, the proceedings were still pending on that date.

2. The "Pinto" proceedings

10. On 3 October 2001 the applicant lodged an appeal with the Rome Court of Appeal under Law no. 89 of 24 March 2001, known as the "Pinto" Act, complaining of the excessive length of the above-described proceedings. She asked the court to rule that there had been a breach of Article 6 § 1 of the Convention and to order the Italian Government to pay compensation for the non-pecuniary damage sustained.

11. In a decision of 28 February 2002, the text of which was deposited with the registry on 30 April 2002, the Court of Appeal found that a reasonable time had been exceeded. It awarded the applicant 2,500 euros (EUR), on an equitable basis, in compensation for non-pecuniary damage and EUR 710 for costs and expenses. That decision became final by 15 June 2003 at the latest and was enforced by the authorities between 23 March 2004 and 12 July 2004.

12. In a letter of 7 January 2003 the applicant informed the Court of the outcome of the domestic proceedings and asked it to resume its examination of her application.

In the same letter the applicant also informed the Court that she did not intend to appeal to the Court of Cassation because an appeal to that court could only be on points of law.

THE LAW

I. THE OBJECTION OF INADMISSIBILITY RAISED BY THE GOVERNMENT

13. The Government raised an objection on grounds of non-exhaustion of domestic remedies since the applicant had not appealed on points of law. The success of other applicants who had used that remedy showed that it was an effective one. In support of their submission, they relied on four judgments of the plenary Court of Cassation.

14. The Court notes that it has already dismissed the Government's objection concerning the existence of a domestic remedy in its admissibility decision of 22 January 2004. It also points out that the Court of Cassation's case-law to which the Government referred dated from 26 January 2004 whereas the decision of the Rome Court of Appeal had become final by 15 June 2003 at the latest.

15. The Court also reiterates its previous finding that it was reasonable to assume that after 26 July 2004 the public could no longer have been unaware of the Court of Cassation's reversal of precedent, particularly its judgment no. 1340, and that it was from that date onwards that applicants had to be required to use that remedy for the purposes of Article 35 § 1 of the Convention (see *Di Sante v. Italy* (dec.), no. 56079/00, 24 June 2004).

Since the time-limit for lodging an appeal with the Court of Cassation had expired before 26 July 2004, the Court considers that in the circumstances the applicant was exempted from the obligation to exhaust remedies.

16. The Court considers that the Government based their objection on arguments that were not such as to call into question its decision on admissibility. Accordingly, the objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

17. The applicant complained that the length of the proceedings had failed to comply with the “reasonable-time” principle set forth in Article 6 § 1 of the Convention which reads as follows:

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

18. On 13 July 2004 the applicant indicated that she was not complaining of the way in which the Court of Appeal had assessed the delays, but of the derisory amount of damages awarded.

19. The Government contested that argument.

20. The Court reiterates that in its admissibility decision of 22 January 2004 it held that in awarding the sum of EUR 2,500 in compensation for non-pecuniary damage under the Pinto Act the Court of Appeal had failed to sufficiently and properly remedy the breach of which the applicant complained.

21. The period to be taken into consideration began on 17 January 1992 and had not yet ended on 23 March 2004. By then it had already lasted twelve years and two months for two levels of jurisdiction.

22. The Court reiterates its previous finding in many judgments (see, for example, *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V) that in Italy there is a practice incompatible with the Convention resulting from an accumulation of breaches of the “reasonable-time” requirement. Where the Court finds such a breach, this accumulation constitutes an aggravating circumstance of the violation of Article 6 § 1.

23. Having examined the facts of the case in the light of the parties' arguments, and having regard to its case-law on the question, the Court considers that the length of the proceedings complained of did not satisfy the “reasonable-time” requirement and that this was one more instance of the above-mentioned practice.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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. Reiteration of the criteria followed by the Court

1. General criteria

25. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences.

If the domestic law allows only partial reparation to be made, Article 41 of the Convention gives the Court the power to award compensation to the party injured by the act or omission in respect of which a violation of the Convention has been found. The Court enjoys a certain discretion in the exercise of that power, as the adjective “just” and the phrase “if necessary” attest.

Among the matters which the Court takes into account when assessing compensation are pecuniary damage, that is the loss actually suffered as a direct result of the alleged violation, and non-pecuniary damage, that is reparation for the anxiety, inconvenience and uncertainty caused by the violation, and other non-pecuniary loss.

In addition, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

2. Criteria specific to non-pecuniary damage

26. As regards an equitable assessment of the non-pecuniary damage sustained as a result of the length of proceedings, the Court considers that a sum varying between EUR 1,000 and 1,500 per year's duration of the proceedings (and not per year's delay) is a base figure for the relevant calculation. The outcome of the domestic proceedings (whether the applicant loses, wins or ultimately reaches a friendly settlement) is immaterial to the non-pecuniary damage sustained on account of the length of the proceedings.

The aggregate amount will be increased by EUR 2,000 if the stakes involved in the dispute are considerable, such as in cases concerning labour law, civil status and capacity, pensions, or particularly serious proceedings relating to a person's health or life.

The basic award will be reduced in accordance with the number of courts dealing with the case throughout the duration of the proceedings, the conduct of the applicant – particularly the number of months or years due to unjustified adjournments for which the applicant is responsible – what is at stake in the dispute – for example where the financial consequences are of little importance for the applicant – and on the basis of the standard of living in the country concerned. A reduction may also be envisaged where the applicant has been only briefly involved in the proceedings, having continued them in his or her capacity as heir.

The amount may also be reduced where the applicant has already obtained a finding of a violation in domestic proceedings and a sum of money by using a domestic remedy. Apart from the fact that the existence of

a domestic remedy is in full keeping with the subsidiarity principle embodied in the Convention, such a remedy is closer and more accessible than an application to the Court, is faster, and is processed in the applicant's own language. It thus offers advantages that need to be taken into consideration.

B. Application of the above criteria to the instant case

1. Non-pecuniary damage

27. The applicant claimed EUR 15,500 in non-pecuniary damages.

28. The Government submitted that, should the Court find a violation, that finding would in itself constitute sufficient just satisfaction.

29. The Court considers that in respect of proceedings which lasted more than twelve years for two levels of jurisdiction EUR 14,000 could be regarded as an equitable sum. The Court notes that the stakes involved in the dispute were such as to increase the sum by EUR 2,000 but that the applicant's conduct contributed to delaying the proceedings, albeit it only slightly. Accordingly, the Court considers that the applicant should be awarded EUR 14,000 less 30% on account of a finding of a violation by the domestic court (see paragraph 26 above), that is, EUR 9,800.

30. From that sum should also be deducted the amount of compensation awarded to the applicant at domestic level, that is, EUR 2,500. Accordingly, the applicant is entitled to EUR 7,300 in compensation for non-pecuniary damage, plus any tax that may be chargeable.

2. Costs and expenses

31. The applicant also claimed EUR 1,500, plus a 10% lump-sum reimbursement, plus 2% CPA (contribution to the lawyers' insurance fund) and 20% VAT (value-added tax) for the costs and expenses incurred before the Court.

32. The Government did not express a view on the matter.

33. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession, the above criteria and the length and complexity of the proceedings before it, the Court considers that the applicant should be awarded EUR 1,500 plus any tax that may be chargeable.

3. Default interest

34. 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 shall pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following sums:
 - i. EUR 7,300 (seven thousand three hundred euros) for non-pecuniary damage;
 - ii. EUR 1,500 (one thousand five hundred euros) for costs and expenses;
 - iii. any tax that may be chargeable on the above amounts;
 - 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 plus three percentage points;
4. *Dismisses* the remainder of the claim for just satisfaction.

Done in French, and communicated in writing on 10 November 2004 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President