CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF COCCHIARELLA v. ITALY

(Application no. 64886/01)

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 Cocchiarella 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. 64886/01) 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, Mr Giovanni Cocchiarella ("the applicant"), on 22 December 1997.

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 20 November 2003 the Court declared the application admissible.

THE FACTS

4. The applicant was born in 1942 and lives in Benevento.

1. The principal proceedings

5. On 15 July 1994 Mrs P., the current applicant's mother, brought proceedings in the Benevento Magistrate's Court, sitting as an employment tribunal, seeking acknowledgment of her right to an invalidity pension

(*pensione di inabilità*) and an attendance allowance (*indennità di accompagnamento*).

6. On 23 July 1994 the magistrate's court fixed the first hearing for 11 March 1996. On that day the court appointed an expert and adjourned the proceedings to a hearing on 9 April 1997.

7. In a judgment of the same day, the text of which was deposited with the registry on 13 June 1997, the court dismissed Mrs P's claim.

8. On 29 July 1997 Mrs P. lodged an appeal with the Naples District Court. The president of the court designated a judge rapporteur and set the appeal down for a hearing on 30 April 2001.

9. In the meantime, also on 29 July 1997, Mrs P. died. On 25 January 2000 the applicant joined the proceedings. A hearing was to be held on 14 February 2002. In a judgment of 16 January 2003, the text of which was deposited with the registry on 21 March 2003, the court upheld Mrs P.'s claim as of 1 June 1996.

2. The "Pinto" proceedings

10. On 3 October 2001 the applicant lodged an application 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. The applicant requested 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, which he assessed at 30,000,000 Italian lire (15,493.71 euros (EUR)).

11. In a decision of 7 March 2002, the text of which was deposited with the registry on 6 May 2002, the Court of Appeal found that a reasonable time had been exceeded. It awarded the applicant EUR 1,000 in compensation for non-pecuniary damage and EUR 800 for costs and expenses. The decision became final by 21 June 2003 at the latest.

12. In a letter of 8 January 2003 the applicant informed the Court of the outcome of the domestic proceedings and asked it to resume its examination of the application. According to the information provided by the applicant on 12 July 2004, the authorities had not yet enforced the Court of Appeal's decision.

THE LAW

I. OBJECTION OF INADMISSIBILITY RAISED BY THE GOVERNMENT

13. The Government submitted that they had not been given a sufficient opportunity to comment on the admissibility of the application since it had been declared admissible without any additional question concerning the application of the Pinto Act being communicated to them.

They disputed the interpretation given in other similar cases and, in support of their submission, relied on four judgments of the Court of Cassation delivered in plenary which showed that an appeal to the Court of Cassation should never have been regarded as ineffective from the outset.

They maintained that the present objection was different from the one examined at the admissibility stage and submitted that, as it could not be submitted earlier, it had to be examined now.

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 20 November 2003. It also notes that the case-law of the Court of Cassation referred to by the Government is dated 26 January 2004, whereas the decision of the Rome Court of Appeal had become definitive on 21 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 new 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 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 capable of calling 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 envisaged 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 he 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 20 November 2003 it held that in awarding the sum of EUR 1,000 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 15 July 1994 and ended on 21 March 2003. It therefore lasted approximately eight years and eight 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, which is the loss actually suffered as a direct result of the alleged violation, and non-pecuniary damage, which 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. Pecuniary and non-pecuniary damage

27. The applicant submitted that the non-pecuniary damage sustained could be assessed at EUR 11,000. As he considered that the pecuniary damage sustained in order to provide his mother with a home help was difficult to quantify, he asked the Court to take it into account when assessing the non-pecuniary damages and suggested an increase of EUR 3,000 under this head.

28. The Government disputed those claims particularly as the applicant was the claimant's son. In their submission, pecuniary and non-pecuniary damage should not be confused; moreover, the latter amount could not be the same for the holder of the right asserted before the courts as it was for their relatives or heirs.

29. The Court does not discern any causal connection between the violation found and the pecuniary damage alleged, and rejects this claim.

30. As regards non-pecuniary damage, however, the Court considers that in respect of proceedings which lasted more than eight years for two levels of jurisdiction EUR 7,000 could be regarded as an equitable sum. However, the Court notes that even if what is at stake in the dispute is such as to justify increasing the amount by EUR 2,000 and the conduct of the applicant and his mother did not contribute to delaying the proceedings, the applicant did not participate until the end of the proceedings. Accordingly, the Court considers that the applicant should be awarded EUR 8,000 less 30% on account of a finding of a violation by the domestic court (see paragraph 26 above), that is, EUR 5,600.

31. From that sum should also be deducted the amount of compensation awarded to the applicant at domestic level, that is, EUR 1,000. Accordingly, the applicant is entitled to EUR 4,600 in compensation for non-pecuniary damage, plus any tax that may be chargeable.

2. Costs and expenses

32. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the Court.

33. The Government left the issue to the Court's discretion.

34. 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 sum claimed should be awarded in full plus any tax that may be chargeable.

3. Default interest

35. 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 4,600 (four thousand six hundred euros) for non-pecuniary damage;
      ii. EUR 2,000 (two thousand 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 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 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