



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

FIRST SECTION

CASE OF Ernestina ZULLO v. ITALY

(Application no. 64897/01)

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 Ernestina Zullo v. Italy,

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

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER *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. 64897/01) 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 Ernestina Zullo (“the applicant”), on 4 September 1998.

2. The applicant was represented by Mr A. Nardone and Mr T. Verrilli, lawyers 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 1933 and lived in Paduli (Benevento). She died on 6 March 1999. In a letter of 25 March 1999 her heir, Mr Mario Casciano (M.C.), informed the Court that he intended to pursue the proceedings.

1. The principal proceedings

5. On 10 November 1994 the applicant 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 21 November 1994 the magistrate's court fixed the first hearing for 19 February 1996. On that day the court appointed an expert and adjourned the proceedings to a hearing on 8 July 1997. The hearing was adjourned by the court of its own motion to 28 January 1999. On that day the court set the case down for hearing on 15 June 1999. In the meantime, following his mother's death, M.C. joined the proceedings.

7. The hearing was adjourned by the court of its own motion to 14 February 2000. However, it was not held on that date because the lawyers were on strike. The three hearings held between 28 March 2000 and 7 November 2000 were devoted to organising new expert evidence.

8. In a decision of 30 January 2001, the text of which was deposited with the registry on 6 February 2001, the Benevento Magistrate's Court, sitting as an employment tribunal, dismissed the applicant's claim.

9. On 15 February 2001 M.C. appealed to the Naples Court of Appeal. The proceedings were still pending on 13 February 2004.

2. The “Pinto” proceedings

10. In 2001 the applicant's son 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's son 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 and to pay the legal costs plus those incurred before the Court. M.C. claimed, *inter alia*, 20,000,000 Italian lire (10,329.14 euros (EUR)) in non-pecuniary damages.

11. In a decision of 5 April 2002, the text of which was deposited with the registry on 6 June 2002, the Court of Appeal found that a reasonable time had been exceeded. It awarded EUR 1,200 in compensation for non-pecuniary damage, EUR 500 for costs and expenses incurred in the proceedings before the Court and EUR 500 – of which EUR 300 were fees – for the Pinto proceedings. The decision was served on the authorities on 13 November 2002 and became binding on 13 January 2003. The authorities were given notice to comply on 20 March 2003 and M.C. lodged an application for seizure with the Rome judge responsible for enforcement proceedings in April 2003. Those proceedings were still pending on 7 February 2004.

12. In a letter of 29 November 2002 M.C. informed the Court of the outcome of the domestic proceedings and asked it to resume its examination of his application.

13. In the same letter the applicant's son also informed the Court that he 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. OBJECTION OF INADMISSIBILITY RAISED BY THE GOVERNMENT

14. 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.

15. 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 on 13 January 2003.

16. 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 expired before 26 July 2004, the Court considers that in the circumstances the applicant was exempted from the obligation to exhaust remedies.

17. 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

18. 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...”

19. The Government contested that argument.

20. The Court reiterates that in its inadmissibility decision of 22 January 2004 it held that in awarding the sum of EUR 1,200 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's son complained.

21. The period to be taken into consideration began on 10 November 1994 and had not yet ended on 13 February 2004. By that date it had already lasted nine years and three 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 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's son claimed EUR 15,493.71 for biological damage (*danni biologici*), EUR 6,197.48 for pecuniary damage and EUR 5,164.57 for non-pecuniary damage.

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

29. The Court does not discern any causal connection between the violation found and the pecuniary and biological damage alleged, and dismisses these claims.

30. As regards non-pecuniary damage, however, the Court considers that in respect of proceedings which lasted more than nine years for two levels of jurisdiction EUR 8,000 could be regarded as an equitable sum. The Court notes that what is at stake in the dispute is such as to justify increasing the amount by EUR 2,000 and that neither the conduct of the applicant nor that of M.C. contributed to delaying the proceedings. Accordingly, the Court considers that M.C. should be awarded EUR 10,000 less 30% on account of the finding of a violation by the domestic court (see paragraph 26 above), that is, EUR 7,000.

31. From that sum should also be deducted the amount of compensation awarded to the applicant's son at domestic level, that is, EUR 1,200. Accordingly, the applicant's son is entitled to EUR 5,800 in compensation for non-pecuniary damage.

32. In the present case, however, M.C. himself claimed less than the Court could have awarded him.

The Court therefore considers it appropriate to award M.C. the amount claimed of EUR 5,164.57 plus any tax that may be chargeable.

2. Costs and expenses

33. The applicant's son also claimed an unspecified amount for the costs and expenses incurred in the Pinto proceedings and before the Court. He pointed out that the costs of the Court of Appeal proceedings were EUR 300.14.

34. The Government did not express an opinion on the matter.

35. 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 and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads, from which must be deducted the EUR 500 awarded by the Court of Appeal, and therefore awards M.C. EUR 1,500 plus any tax that may be chargeable.

3. 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, the following sums:
 - i. EUR 5,164.57 (five thousand one hundred and sixty-four euros and fifty-seven cents) in respect of non-pecuniary damage;
 - ii. EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses; plus
 - 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 notified in writing on 10 November 2004 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President