



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

FIRST SECTION

CASE OF Giuseppina and Orestina PROCACCINI v. ITALY

(Application no. 65075/01)

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 Giuseppina and Orestina Procaccini 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. VAJIC,
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. 65075/01 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 two Italian nationals, Mrs Giuseppina Procaccini and Mrs Orestina Procaccini (“the applicants”), on 19 November 1997.

2. The applicants were 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 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 applicants were born in 1932 and 1938 respectively and live in Benevento.

1. The principal proceedings

5. On 23 October 1989 Mr G., the applicants' father, brought proceedings against E., a company, in the Benevento District Court to have a contract for the installation of windows in his flat set aside.

6. Preparation of the case for trial began on 30 November 1989. Of the eighteen hearings listed between 22 March 1990 and 18 May 1998 three were adjourned by the court of its own motion and three because E.'s lawyer had failed to appear, four were devoted to organising expert evidence, five to hearing evidence from witnesses, one was adjourned because the judge had withdrawn from the case, another one was adjourned because Mr G.'s lawyer had failed to appear and a further one was adjourned at his request. The applicants joined the proceedings following Mr G.'s death on 27 March 1995.

7. On an unspecified date the case was referred to the panel of judges dealing with the oldest cases (*sezione stralcio*).

Of the six hearings listed between 15 February 1999 and 9 October 2001 two were adjourned by the court of its own motion, one was adjourned by the judge responsible for preparing the case, one was devoted to a request to set the case down for hearing of oral submissions and two to the making of oral submissions.

8. In a judgment of 30 May 2002, the text of which was deposited with the registry on 31 October 2002, the court granted the applicants' claims in part and awarded them 945.40 euros (EUR) in compensation for the damage sustained.

2. The "Pinto" proceedings

9. On 10 October 2001 the applicants 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. The applicants 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. The applicants claimed 25,000,000 Italian lire (ITL) (EUR 12,911.42) each in non-pecuniary damages.

10. In a decision of 25 February 2002, the text of which was deposited with the registry on 23 April 2002, the Court of Appeal found that a reasonable time had been exceeded. It rejected the claim for non-pecuniary damages for lack of proof and awarded a global sum of EUR 2,250 in compensation for non-pecuniary damage and EUR 750 for costs and expenses. That decision became binding by 8 June 2003 at the latest. By 12 July 2004 the authorities had still not executed the decision.

11. In a letter of 7 January 2003 the applicants informed the Court of the outcome of the domestic proceedings and asked it to resume its examination of their application.

In the same letter the applicants also informed the Court that they 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

12. The Government raised an objection on grounds of non-exhaustion of domestic remedies since the applicants 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.

13. 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 8 June 2003 at the latest.

14. 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 applicants were exempted from the obligation to exhaust remedies.

15. 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

16. The applicants 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 ...”

17. On 13 July 2004 the applicants indicated that they were not complaining of the way in which the Court of Appeal had assessed the delays, but of the derisory amount of damages awarded.

18. The Government contested that argument.

19. The Court reiterates that in its admissibility decision of 22 January 2004 it held that in awarding the sum of EUR 2,250, that is, EUR 1,125 per applicant, 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 applicants complained.

20. The period to be taken into consideration began on 23 October 1989 and ended on 31 October 2002. It therefore lasted thirteen years for one level of jurisdiction.

21. 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.

22. 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

23. 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

24. 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

25. 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 applicants 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 applicants – particularly the number of months or years due to unjustified adjournments for which the applicants is responsible – what is at stake in the dispute – for example where the financial consequences are of little importance for the applicants – and on the basis of the standard of living in the country concerned. A reduction may also be envisaged where the applicants 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 applicants have 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 applicants'

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

26. The applicants each claimed EUR 8,875 in respect of non-pecuniary damage.

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

28. The Court considers that in respect of proceedings which lasted thirteen years for one level of jurisdiction EUR 20,000 could be regarded as an equitable sum. However, the Court notes that the conduct of the applicants' father slightly contributed to delaying the proceedings and that they had not taken part in the proceedings from the beginning. Moreover, the low stakes involved in the dispute should also be taken into consideration. Accordingly, the Court considers that each applicant should be awarded EUR 10,000 less 30% on account of a finding of a violation by the domestic court (see paragraph 25 above), that is, EUR 7,000.

29. From that sum should also be deducted the amount of compensation awarded to the applicants at domestic level, that is, EUR 1,125. Accordingly, each applicant is entitled to EUR 5,875 in compensation for non-pecuniary damage, plus any tax that may be chargeable.

2. Costs and expenses

30. The applicants also claimed a global sum of 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.

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

32. 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 each applicant should be awarded EUR 750 plus any tax that may be chargeable.

3. Default interest

33. 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 each 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 5,875 (five thousand eight hundred and seventy-five euros) for non-pecuniary damage;
 - ii. EUR 750 (seven hundred and fifty 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