



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

FIRST SECTION

**CASE OF GIUSEPPE MOSTACCIUOLO v. ITALY (No. 1)**

*(Application no. 64705/01)*

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 Giuseppe Mostacciuolo v. Italy (No. 1),**

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,

Mrs F. TULKENS,

Mrs N. VAJIC,

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. 64705/01) 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 Giuseppe Mostacciuolo (“the applicant”), on 4 March 1998.

2. The applicant was represented by Mr V. Collarile and Mr C. Marcellino, 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 1938 and lives in Benevento.

### *1. The principal proceedings*

5. On an unspecified date E.A.S., a company, applied to the Benevento District Court for an order against the applicant for payment of 7,500,000 Italian lire (3,873.43 euros (EUR)) in performance of a contract for

professional services. In a decision of 13 October 1988 the President of the court granted the application. The order was served by E.A.S. on 28 November 1988. On 3 December 1988 the applicant challenged it in the same court.

6. Preparation of the case for trial began on 13 January 1989. On 18 January 1989 the case was joined to another case that was pending between the same parties. The immediate enforceability of the order was suspended. Of the seventeen hearings listed between 14 June 1989 and 26 November 1998 two were devoted to hearing evidence from the applicant, three to hearing other evidence, six were adjourned by the court of its own motion, one was adjourned to allow the parties to reach a friendly settlement, four were adjourned at the request of the applicant or both parties and a one was adjourned because E.A.S. had failed to appear.

7. However, 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 16 March 1999 and 28 November 2001 one was adjourned because E.A.S. had not appeared (owing to the registry's failure to notify it of the date to which the hearing had been adjourned by the court of its own motion), one was adjourned because the lawyers were on strike, one was adjourned to allow the parties to make their submissions, and two were adjourned by the court of its own motion.

8. Following a hearing, the date of which has not been communicated to the Court, on 25 September 2002 the court set the case down for hearing of oral submissions on 8 June 2004.

## 2. The “Pinto” proceedings

9. On 10 January 2002 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. He 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 pecuniary and non-pecuniary damage sustained. The applicant claimed EUR 14,460.94 in pecuniary and non-pecuniary damages. He sought the reimbursement of his costs, including those incurred before the Court, but did not quantify or provide a breakdown of them.

10. In a decision of 21 June 2002, the text of which was deposited with the registry on 3 September 2002, the Court of Appeal found that a reasonable time had been exceeded. It awarded the applicant EUR 1,000 on an equitable basis and EUR 800 for costs and expenses, including those incurred before the Court, but without apportioning them.

11. That decision was served on 23 January 2003 and became binding on 24 March 2003. The applicant served the authorities with notice to comply on 11 October 2003. The applicant brought attachment proceedings

before the Rome judge responsible for enforcement proceedings and a hearing was to be held on 28 March 2004.

12. In a letter of 21 January 2003, the applicant informed the Court of the outcome of the domestic proceedings and asked the Court to resume its examination of his application.

13. The applicant did not indicate that he had appealed to the Court of Cassation.

## THE LAW

### I. THE 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 by 24 March 2003 at the latest.

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 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 ...”

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 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 3 December 1988 and had not yet ended on 8 June 2004. By then it had already lasted fifteen years and six months for one level 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. Pecuniary and non-pecuniary damage*

27. The applicant claimed EUR 10,000 in pecuniary damages for having to give up his job as a surveyor on account of the proceedings which had resulted in a loss of confidence in him, and EUR 15,000 in non-pecuniary damages.

28. The Government disputed those claims and submitted that, were the Court to find a violation, that in itself was sufficient just satisfaction.

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 fifteen years for one level of jurisdiction EUR 24,000 could be regarded as an equitable sum. However, the Court notes that the applicant's conduct slightly contributed to delaying the proceedings and that the stakes involved should also be taken into account. Accordingly, the Court considers that the applicant should be awarded EUR 17,000 less 30% on account of a finding of a violation by the domestic court (see paragraph 26 above), that is, EUR 11,900.

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 10,900 in compensation for non-pecuniary damage, plus any tax that may be chargeable.

### *2. Costs and expenses*

32. The applicant also claimed EUR 3,534.94 for the costs and expenses incurred before the Court.

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

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 applicant should be awarded EUR 2,000 plus any tax that may be chargeable, and awards him that amount.

*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 10,900 (ten thousand nine 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 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