



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

FIRST SECTION

CASE OF GIUSEPPE MOSTACCIUOLO v. ITALY (No. 2)

(Application no. 65102/01)

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. 2),

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. 65102/01) 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 25 February 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 5 May 1987 Mr F. asked the Benevento District Court to order the applicant to pay him 73,934,495 Italian lire (38,183.98 euros (EUR)) for professional services. On 11 May 1987 the President of the Benevento

District Court granted the application. The order was served on the applicant on 20 May 1987.

6. On 8 June 1987 the applicant challenged the order in the Benevento District Court. Preparation of the case for trial began on 24 September 1987. Of the twenty-nine hearings listed between 26 November 1987 and 16 October 1998 seven were adjourned by the court of its own motion, ten were devoted to organising expert evidence and supplementary findings and two were adjourned at the parties' request.

7. On 16 April 1999 the case was referred to the *sezioni stralcio*. Of the four hearings listed between 22 September 1999 and 8 February 2002 one was adjourned because the parties had not appeared and one was adjourned by the court of its own motion.

2. The “Pinto” proceedings

8. 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. The applicant 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, *inter alia*, EUR 14,460.94 in pecuniary and non-pecuniary damages.

9. In a decision of 21 June 2002, the text of which was deposited with the registry on 2 October 2002, the Court of Appeal found that a reasonable time had been exceeded. It dismissed the claim for pecuniary damages on the ground that the applicant had not provided any proof, awarded him EUR 2,000 on an equitable basis in compensation for non-pecuniary damage, EUR 700 for costs and expenses incurred in the proceedings before the European Court of Human Rights and EUR 900 for the costs and expenses incurred in the Pinto proceedings.

10. That decision was served on the authorities on 23 January 2003 and became binding on 24 March 2003. The applicant served the authorities with notice to comply on 15 October 2003. On 29 October 2003 the applicant lodged an application for seizure with the Rome judge responsible for enforcement proceedings and a hearing was to be held on 28 March 2004.

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

12. 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

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 on 24 March 2003.

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 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. 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 2,000 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.

20. The period to be taken into consideration began on 8 June 1987 and had not yet ended on 8 February 2002. By then it had already lasted fourteen years and eight months 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, 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

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 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

26. 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.

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

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

29. As regards non-pecuniary damage, however, the Court considers that in respect of proceedings which lasted more than fourteen years for one level of jurisdiction EUR 22,000 could be regarded as an equitable sum. The Court notes that the applicant's conduct barely contributed to delaying the proceedings. Accordingly, the Court considers that the applicant should be awarded EUR 22,000 less 30% on account of a finding of a violation by the domestic court (see paragraph 25 above), that is, EUR 15,400.

30. From that sum should also be deducted the amount of compensation awarded to the applicant at domestic level, that is, EUR 2,000. Accordingly, the applicant is entitled to EUR 13,400 in compensation for non-pecuniary damage, plus any tax that may be chargeable.

2. Costs and expenses

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

32. The Government did not express an opinion 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 EUR 2,000 to be a reasonable amount for the proceedings before the Court less the EUR 700 awarded by the Court of Appeal, that is, EUR 1,300 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 13,400 (thirteen thousand four hundred euros) for non-pecuniary damage;
 - ii. EUR 1,300 (one thousand three 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