



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

FIRST SECTION

CASE OF MUSCI v. ITALY

(Application no. 64699/01)

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 Musci 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,

Mrs F. TULKENS,

Mrs N. VAJIĆ

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. 64699/01) 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 Francesco Musci (“the applicant”), on 10 February 1998.

2. The applicant was represented by Mr V. Tassone, a lawyer practising in San Vito sullo Ionio (Catanzaro). 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 applicant was born in 1923 and lives in Catanzaro.

1. The principal proceedings

5. On 21 May 1986 Mr P. brought proceedings against the applicant in the Chiaravalle Centrale Magistrate's Court for recognition of the existence of a right of way.

6. Preparation of the case for trial began on 28 May 1986 and on that date the magistrate's court appointed an expert. Of the seven hearings listed between 8 October 1986 and 2 December 1987 three were devoted to organising expert evidence, two to an inspection of the premises by the *pretore*, two were adjourned by the court of its own motion and one was adjourned because the lawyers were on strike. On 27 July 1988 the magistrate's court set the case down for hearing of oral submissions on 1 March 1989. On that date the hearing was adjourned to 5 July 1989 at the parties' request. Of the fifteen hearings listed between 2 May 1991 and 4 June 1997 six were adjourned at the parties' request, two at the request of the defendant, five by the court of its own motion – one of which was because the registry had not notified the applicant of the date of the hearing – one because the applicant had changed lawyer and another one to allow the registry to check that the stamps had been properly affixed to a number of documents in the case file. Judgment was reserved on 22 October 1997.

7. In an order of 26 November 1997, which was not made at a hearing, the court reopened the investigation and asked the parties to file documents with the registry. On 4 March 1998 the court reserved judgment.

8. In an order of 9 April 1998 the court reopened the investigation, noted that the parties had not yet filed the documents requested and adjourned the case to 7 October 1998. On that date judgment was reserved.

9. In a judgment of the same date, the text of which was deposited with the registry on 16 August 1999, the magistrate's court granted Mr P.'s application.

10. On 27 October 2000 the applicant appealed to the Catanzaro Court of Appeal. According to the most recent information provided by the applicant, the civil proceedings were still pending on 6 July 2004.

2. *The “Pinto” proceedings*

11. On an unknown date the applicant lodged an appeal with the Salerno 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 requested the court to rule that there had been a breach of Article 6 § 1 of the Convention and to order the Italian State to pay compensation for the distress and other non-pecuniary damage sustained. The applicant claimed 13,000 euros (EUR) in compensation for distress and other non-pecuniary damage, and sought reimbursement of the costs and expenses but did not quantify them.

12. In a decision of 1 October 2002, the text of which was deposited with the registry on 13 December 2002, the Court of Appeal found that a reasonable time had been exceeded. It awarded the applicant EUR 3,500 in compensation for non-pecuniary damage. In respect of costs and expenses, the Court of Appeal noted that the applicant had not given particulars of the claim. Having regard to the quantity and quality of the work done by the

lawyer, it assessed them at EUR 258.23 plus taxes. That decision became binding by 28 January 2004 at the latest.

13. In a letter of 20 October 2003 the applicant informed the Court of the outcome of the domestic proceedings and asked it to resume its examination of his application.

14. In a letter of 18 November 2003 the applicant 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. THE OBJECTION OF INADMISSIBILITY RAISED BY THE GOVERNMENT

15. 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.

16. 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 28 January 2004 at the latest.

17. 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.

18. 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

19. 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 ...”

20. The Government contested that argument.

21. The Court reiterates that in its admissibility decision of 22 January 2004 it held that in awarding the sum of EUR 3,500 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.

22. The period to be taken into consideration began on 21 May 1986 and not yet ended on 6 July 2004. By then it had already lasted more than eighteen years and one month for two levels of jurisdiction.

23. 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.

24. 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

25. 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

26. 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

27. 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. Non-pecuniary damage

28. The applicant claimed EUR 13,500 in respect of the non-pecuniary damage he had sustained.

29. The Government submitted that, were the Court to find a violation of the Convention, that finding would in itself constitute sufficient just satisfaction.

30. The Court considers that, in respect of proceedings which lasted more than eighteen years for two levels of jurisdiction EUR 26,000 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 in the dispute must also be taken into account. Accordingly, the Court considers it appropriate to award the applicant EUR 17,000 less 30% on account of a finding of a violation by the domestic court (see paragraph 27 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 3,500. Accordingly, the applicant is entitled to EUR 8,400 in compensation for non-pecuniary damage, plus any tax that may be chargeable.

2. Costs and expenses

32. The applicant also claimed EUR 3,600 plus 2% CPA (contribution to the lawyers' insurance fund) and 20% VAT (value-added tax) for the costs and expenses incurred before the domestic courts in the "Pinto" proceedings and for those incurred before the Court, but did not give particulars.

33. The Government did not express an opinion 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. With regard to the "Pinto" proceedings, the Court notes that the domestic court assessed the work done by the lawyer in terms of quantity and quality and pointed out that he had not given particulars of his claims. Since he did not do so before the Court either, it considers that this part of the claim must be dismissed as being insufficiently substantiated. In respect of the proceedings before the Court, having regard to the

information in its possession, the above criteria and the length and complexity of the proceedings before it, the Court considers a sum of EUR 2,000 to be reasonable, plus any tax that may be chargeable, and awards it to the applicant.

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 8,400 (eight thousand four 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