



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

GRAND CHAMBER

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

*(Application no. 64705/01)*

JUDGMENT

STRASBOURG

29 March 2006

*This judgment is final but may be subject to editorial revision.*



**In the case of Giuseppe Mostacciuolo v. Italy (no. 1),**

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mr L. WILDHABER, *President*,

Mr C.L. ROZAKIS,

Mr J.-P. COSTA,

Sir Nicolas BRATZA,

Mr B.M. ZUPANČIČ,

Mr L. CAFLISCH,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr M. PELLONPÄÄ,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr S.E. JEBENS, *judges*,

Mr L. FERRARI BRAVO, *ad hoc judge*,

and Mr T.L. EARLY, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 1 July 2005 and 18 January 2006,

Delivers the following judgment, which was adopted on the last-mentioned 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, of the Benevento Bar, in the proceedings before the Chamber and subsequently by Mr S. de Nigris de Maria, Mr T. Verrilli, Mr C. Marcellino, Mr A. Nardone and Mr V. Collarile, of the Benevento Bar. 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, and their deputy co-Agent, Mr N. Lettieri.

3. The applicant alleged that there had been a breach of Article 6 § 1 of the Convention on account of the length of civil proceedings to which he was a party. Subsequently, the applicant indicated that he was not complaining of the manner in which the Court of Appeal had calculated the delays but of the derisory amount awarded in damages.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to a Section of the Court (Rule 52 § 1 of the Rules of Court). Mr V. Zagrebelsky, the judge elected in respect of Italy, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Mr L. Ferrari Bravo to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

6. On 22 January 2004 the application was declared admissible by a Chamber of the First Section, composed of Mr C.L. Rozakis, Mr P. Lorenzen, Mr G. Bonello, Mrs F. Tulkens, Mr E. Levits, Mrs S. Botoucharova, judges, Mr L. Ferrari Bravo, *ad hoc* judge, and also of Mr S. Nielsen, Section Registrar.

7. On 10 November 2004 a Chamber of the same Section, composed of Mr C.L. Rozakis, Mr P. Lorenzen, Mr G. Bonello, Mrs F. Tulkens, Mrs N. Vajić, Mrs E. Steiner, judges, Mr L. Ferrari Bravo, *ad hoc* judge, and also of Mr S. Nielsen, Section Registrar, gave judgment in which it held unanimously that there had been a violation of Article 6 § 1 of the Convention.

8. On 27 January 2005 the Italian Government requested, in accordance with Article 43 of the Convention and Rule 73, that the case be referred to the Grand Chamber. On 30 March 2005 a panel of the Grand Chamber accepted that request.

9. The composition of the Grand Chamber was determined in accordance with the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24. The President of the Court decided that in the interests of the proper administration of justice the case should be assigned to the same Grand Chamber as the cases of *Riccardi Pizzati v. Italy*, *Musci v. Italy*, *Cocchiarella v. Italy*, *Apicella v. Italy*, *Ernestina Zullo v. Italy*, *Giuseppina and Orestina Procaccini v. Italy* and *Giuseppe Mostacciuolo v. Italy (no. 2)* (applications nos. 62361/00, 64886/01, 64699/01, 64890/01, 64897/01, 65075/01 and 65102/01) (Rules 24, 42 § 2 and 71). To that end the President ordered the parties to form a legal team (see paragraph 2 above).

10. The applicant and the Government each filed a memorial. In addition, third-party comments were received from the Polish, Czech and Slovak Governments, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The applicant replied to those comments (Rule 44 § 5).

11. A hearing took place in public in the Human Rights Building, Strasbourg, on 29 June 2005 (Rule 59 § 3).

There appeared before the Court:

(a) *for the respondent Government*

Mr N. LETTIERI,

*deputy co-Agent;*

(b) *for the applicant*

Mr S. DE NIGRIS DE MARIA, of the Benevento Bar,

Mr T. VERRILLI, of the Benevento Bar,

Mr C. MARCELLINO, of the Benevento Bar,

Mr A. NARDONE, of the Benevento Bar,

Mr V. COLLARILE, of the Benevento Bar,

*Counsel.*

The Court heard addresses by Mr S. de Nigris de Maria, Mr T. Verrilli and Mr N. Lettieri, and Mr Lettieri's replies to judges' questions.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

12. The applicant was born in 1938 and lives in Benevento.

#### A. The main proceedings

13. 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 on the applicant by E.A.S. on 28 November 1988. On 3 December 1988 the applicant challenged it in the same court.

14. 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 enforcement 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 one was adjourned because E.A.S. had failed to appear.

15. However, on an unspecified date the case was referred to the bench 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 because of a lawyers' strike, one to allow the parties to make their submissions, and two by the court of its own motion.

16. Six hearings later, on 13 April 2005 the court set the case down for hearing of oral submissions on 8 June 2005. On that date judgment was reserved. According to information provided by the applicant on 12 October 2005, the proceedings were still pending.

### **B. The "Pinto" proceedings**

17. On 10 January 2002 the applicant 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 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 State 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 legal costs, including those incurred before the Court, but did not quantify or give particulars of them.

18. 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 the length of the proceedings had been excessive. It held as follows:

"... Despite a number of adjournments for which the judicial authorities are not responsible because they were ordered at the request of the parties or because of a lawyers' strike, the length of the proceedings was unreasonable.

Whilst the allegation of pecuniary damage and personal injury is not supported by any proof, the applicant very likely suffered mental distress on account of the unjustified length of the proceedings. The resultant damage, given the foregoing considerations, can be assessed at 1,000 euros, and the legal costs, including those for the proceedings before the European Court of Human Rights, at 800 euros."

The Court of Appeal awarded the applicant EUR 1,000 on an equitable basis in compensation for non-pecuniary damage, and EUR 800 for costs and expenses, including those incurred before the Court, but without giving a breakdown.

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

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

21. The Court of Appeal's decision was served on 23 January 2003 and became final on 24 March 2003. The applicant served the authorities with notice to comply on 11 October 2003. The applicant lodged an application for a garnishee order with the Rome judge responsible for enforcement proceedings and a hearing was held on 28 March 2004. After obtaining a garnishee order on 27 May 2004, the amounts were paid on an unspecified date after service of the order.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Law no. 89 of 24 March 2001, known as the "Pinto Act"

22. Award of just satisfaction in the event of a breach of the requirement to dispose of proceedings within a reasonable time and amendment to Article 375 of the Code of Civil Procedure.

#### CHAPTER II

##### Just satisfaction

##### Section 2

##### Entitlement to just satisfaction

"1. Anyone sustaining pecuniary or non-pecuniary damage as a result of a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Law no. 848 of 4 August 1955, on account of a failure to comply with the 'reasonable-time' requirement in Article 6 § 1 of the Convention, shall be entitled to just satisfaction.

2. In determining whether there has been a violation, the court shall have regard to the complexity of the case and, in the light thereof, the conduct of the parties and of the judge deciding procedural issues, and also the conduct of any authority required to participate in or contribute to the resolution of the case.

3. The court shall assess the quantum of damage in accordance with Article 2056 of the Civil Code and shall apply the following rules:

(a) only damage attributable to the period beyond the reasonable time referred to in subsection 1 may be taken into account;

(b) in addition to the payment of a sum of money, reparation for non-pecuniary damage shall be made by giving suitable publicity to the finding of a violation."

### **Section 3 Procedure**

“1. Claims for just satisfaction shall be lodged with the court of appeal in which the judge sits who has jurisdiction under Article 11 of the Code of Criminal Procedure to try cases concerning members of the judiciary in the district where the case in which the violation is alleged to have occurred was decided or discontinued at the merits stage or is still pending.

2. The claim shall be made on an application lodged with the registry of the court of appeal by a lawyer holding a special authority containing all the information prescribed by Article 125 of the Code of Civil Procedure.

3. The application shall be made against the Minister of Justice where the alleged violation has taken place in proceedings in the ordinary courts, the Minister of Defence where it has taken place in proceedings before the military courts and the Finance Minister where it has taken place in proceedings before the tax commissioners. In all other cases, the application shall be made against the Prime Minister.

4. The court of appeal shall hear the application in accordance with Articles 737 et seq. of the Code of Civil Procedure. The application and the order setting the case down for hearing shall be served by the applicant on the defendant authority at its elected domicile at the offices of State Counsel (*Avvocatura dello Stato*) at least fifteen days prior to the date of the hearing before the Chamber.

5. The parties may apply to the court for an order for production of all or part of the procedural and other documents from the proceedings in which the violation referred to in section 2 is alleged to have occurred and they and their lawyers shall be entitled to be heard by the court in private if they attend the hearing. The parties may lodge memorials and documents up till five days before the date set for the hearing or until expiry of the time allowed by the court of appeal for that purpose on an application by the parties.

6. The court shall deliver a decision within four months after the application is lodged. An appeal shall lie to the Court of Cassation. The decision shall be enforceable immediately.

7. To the extent that resources permit, payment of compensation to those entitled shall commence on 1 January 2002.”

### **Section 4 Time-limits and procedures for lodging applications**

“A claim for just satisfaction may be lodged while the proceedings in which the violation is alleged to have occurred are pending or within six months from the date when the decision ending the proceedings becomes final. Claims lodged after that date shall be time-barred.”

### **Section 5 Communications**

“If the court decides to allow an application, its decision shall be communicated by the registry to the parties, to State Counsel at the Court of Audit to enable him to start an investigation into liability, and to the authorities responsible for deciding whether to institute disciplinary proceedings against the civil servants involved in the proceedings in any capacity.”

### **Section 6 Transitional provisions**

“1. Within six months after the entry into force of this Act, anyone who has lodged an application with the European Court of Human Rights in due time complaining of a violation of the ‘reasonable-time’ requirement contained in Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Law no. 848 of 4 August 1955, shall be entitled to lodge a claim under section 3 hereof provided that the application has not by then been declared admissible by the European Court. In such cases, the application to the court of appeal must state when the application to the said European Court was made.

2. The registry of the relevant court shall inform the Minister for Foreign Affairs without delay of any claim lodged in accordance with section 3 and within the period laid down in subsection 1 of this section.”

### **Section 7 Financial provisions**

“1. The financial cost of implementing this Act, which is put at 12,705,000,000 Italian lire from 2002, shall be met by releasing funds entered in the three-year budget 2001-03 in the chapter concerning the basic current-liability estimates from the ‘special fund’ in the year 2001 forecast of the Ministry of the Treasury, Economy and Financial Planning. Treasury deposits shall be set aside for that purpose.

2. The Ministry of the Treasury, Economy and Financial Planning is authorised to make the appropriate budgetary adjustments by decree.”

## **B. Extracts from Italian case-law**

### *1. The departure from precedent of 2004*

23. On appeal from decisions delivered by the courts of appeal in “Pinto” proceedings, the Court of Cassation, sitting as a full court (*Sezioni Unite*), gave four judgments (nos. 1338, 1339, 1340 and 1341) on 27 November 2003, the texts of which were deposited with the registry on 26 January 2004, quashing the appeal court’s decision and remitting the case for a rehearing. It held that “the case-law of the Strasbourg Court is binding on the Italian courts regarding the application of Law no. 89/2001”.

In its judgment no. 1340 it affirmed, *inter alia*, the principle that

“the court of appeal’s determination of non-pecuniary damage in accordance with section 2 of Law no. 89/2001, although inherently based on equitable principles, must be done in a legally defined framework since reference has to be made to the amounts awarded, in similar cases, by the Strasbourg Court. Some divergence is permissible, within reason.”

24. Extracts from the plenary Court of Cassation’s judgment no. 1339 deposited with the registry on 26 January 2004

“... 2.- The present application poses the fundamental question of what legal effect must be given – in implementing the Law of 24 March 2001 no. 89, and in particular in determining the non-pecuniary damage arising out of the breach of the reasonable length of proceedings requirement – to the judgments of the European Court of Human Rights, whether considered generally as interpretative guidelines which the said Court has laid down with regard to the consequences of the said violation, or with reference to a specific case in which the European Court has already had occasion to give a judgment on the delay in reaching a decision. ...

As stipulated in section 2.1 of the said Law, the legal fact which gives rise to the right to the just satisfaction that it provides for is constituted by the “violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified in accordance with the Law of 4 August 1955 no. 848, for failure to comply with the reasonable time referred to in Article 6, paragraph 1 of the Convention.” In other words, Law no. 89/2001 identifies the fact constituting the right to compensation by reference to a specific provision of the European Convention on Human Rights. This Convention instituted a Court (the European Court of Human Rights, with its seat in Strasbourg) to ensure compliance with the provisions contained therein (Article 19). Accordingly, the competence of the said court to determine, and therefore to interpret, the significance of the said provisions must be recognised.

As the fact constituting the right conferred by Law no. 89/2001 consists of a violation of the European Convention on Human Rights, it is for the Court of the European Convention on Human Rights to determine all the elements of such a legal fact, which thus ends by being “brought into conformity” by the Strasbourg Court, whose case-law is binding on the Italian courts in so far as the application of Law no. 89/2001 is concerned.

It is not necessary therefore to pose the general problem of the relationships between the European Convention on Human Rights and the internal judicial system, which the Advocate-General (*Procuratore Generale*) has amply discussed in court. Whatever opinion one may have about that controversial issue and therefore about the place of the European Convention on Human Rights in the context of the sources of domestic law, it is certain that the direct implementation in the Italian judicial system of a provision of the European Convention on Human Rights, established by Law no. 89/2001 (that is, by Article 6 § 1 in the part relating to “reasonable time”), cannot diverge from the interpretation which the European Court gives of the same provision.

The opposite argument, which would permit a substantial divergence between the application accorded to Law no. 89/2001 in the national system and the interpretation given by the Strasbourg Court to the right to reasonable length of proceedings, would deprive the said Law no. 89/2001 of any justification and cause the Italian State to violate Article 1 of the European Convention on Human Rights, according to which

‘The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention’ (including the said Article 6, which provides for the right to have a case decided within a reasonable length of time).

The reason behind the enactment of Law no. 89/2001 was the need to provide a domestic judicial remedy against violations in respect of the duration of proceedings, so as to give effect to the subsidiary character of intervention on the part of the Court of Strasbourg, expressly provided for by the European Convention on Human Rights (Article 35: “the Court may only deal with the matter after all domestic remedies have been exhausted”). The European system for the protection of human rights is founded on the said principle of subsidiarity. From it derives the duty of the States which have ratified the European Convention on Human Rights to guarantee to individuals the protection of the rights recognised by the European Convention on Human Rights, above all in their own internal order and vis-à-vis the organs of the national judicial system. And this protection must be “effective” (Article 13 of the European Convention on Human Rights), that is, of a kind to remedy the claim without the need for recourse to the Strasbourg Court.

The domestic remedy introduced by Law no. 89/2001 did not previously exist in the Italian system, with the consequence that appeals against Italy in respect of a violation of Article 6 of the European Convention on Human Rights had “clogged” (the term used by rapporteur Follieri in the sitting of the Senate of 28 September 2000) the European Court. The Strasbourg Court observed, prior to Law no. 89/2001, that the said failures to comply on the part of Italy “reflect a continuing situation that has not yet been remedied and in respect of which litigants have no domestic remedy. This accumulation of breaches accordingly constitutes a practice that is incompatible with the Convention” (see the four judgments of the Court delivered on 28 July 1999 in the cases of *Bottazzi, Di Mauro, Ferrari and A. P.*).

Law no. 89/2001 constitutes the domestic remedy to which a “victim of a violation” (as defined by Article 34 of the European Convention on Human Rights) of Article 6 (failure to comply with the reasonable-time requirement) must have recourse before applying to the European Court to claim the “just satisfaction” provided for in Article 41 of the European Convention on Human Rights, which, when the violation exists, is only awarded by the Court “if the internal law of the High Contracting Party concerned allows only partial reparation to be made”. Law no. 89/2001 has therefore allowed the European Court to declare inadmissible applications lodged with it (including before the Act was passed) and aimed at obtaining just satisfaction provided for in Article 41 of the European Convention on Human Rights for the excessive length of proceedings (*Brusco v. Italy*, decision of 6 September 2001).

This mechanism for implementation of the European Convention on Human Rights and observance of the principle of subsidiarity in respect of interventions of the European Court of Strasbourg does not operate, however, in cases in which the Court holds that the consequences of the established violation of the European Convention on Human Rights have not been redressed by domestic law or that this has been done only “partially”, because in such an event the said Article 41 provides for the intervention of the European Court to protect the “victim of the violation”. In such cases an individual application to the Strasbourg Court on the basis of Article 34 of the European Convention on Human Rights is admissible (*Scordino and Others v. Italy*, decision of 27 March 2003) and the Court acts directly to protect the rights of the victim whom it considers not to have been adequately protected by domestic law.

The judge of the adequacy or inadequacy of the protection that the victim has had from domestic law is, obviously, the European Court, whose duty it is to apply Article 41 of the European Convention on Human Rights to ascertain whether, in the presence of a violation of a provision of the European Convention on Human Rights, the internal law has been able to fully redress the consequences of this violation.

The argument whereby, in applying Law no. 89/2001, the Italian court may follow a different interpretation from that which the European Court has given to the provisions of Article 6 of the European Convention on Human Rights (violation of which is the fact giving entitlement to the right to compensation attributed by the said national law) implies that the victim of the violation, if he or she receives reparation at national level considered inadequate by the European Court, must obtain the just satisfaction provided for in Article 41 of the European Convention on Human Rights from the latter Court. This would defeat the purpose of the remedy provided for in Italian law by Law no. 89/2001 and entail a violation of the principle of the subsidiarity of the intervention of the Strasbourg Court.

It is therefore necessary to concur with the European Court of Human Rights, which, in the above-mentioned decision on the *Scordino* application (concerning the inadequacy of the protection afforded by the Italian courts in implementing Law no. 89/2001), affirmed that “it follows from the principle of subsidiarity ... that the national courts must, where possible, interpret and apply domestic law in accordance with the Convention”.

... The preparatory documents of Law no. 89/2001 are even more explicit. In the report concerning the bill of Senator Pinto (proceedings of the Senate no. 3813 of 16 February 1999) it is affirmed that the compensatory mechanism proposed in the legislative initiative (and then adopted by the Act) secures for the applicant “a protection analogous to that which he or she would receive in the international court”, as the direct reference to Article 6 of the European Convention on Human Rights makes it possible to transfer to domestic level “the limits of applicability of the same provision existing at international level, limits which depend essentially on the State and on the development of the case-law of the Strasbourg authorities, especially that of the European Court of Human Rights, whose decisions must therefore guide ... the domestic court in the definition of these limits”.

... 6. – The considerations expounded in sections 3-5 of the document refer in general to the importance of the interpretative guidance of the European Court on the implementation of Law no. 89/2001 with regard to reparation for non-pecuniary damage.

In this particular instance, however, any possibility for the national court to exclude non-pecuniary damage (despite having found a violation of Article 6 of the European Convention on Human Rights) must be considered as non-existent because such is precluded by the previous decision of the European Court which, with reference to the same proceedings, had already ascertained that the unjustified delay in reaching a decision had had consequences involving non-pecuniary damage for the applicant, which the Court itself redressed for a limited period. From such a decision of the European Court it follows that, once the national court has ascertained that the violation has continued in the period following that considered in the said decision, the applicant has continued to suffer non-pecuniary damage, which must be compensated for in application of Law no. 89/2001.

It cannot therefore be maintained – as the Rome Court of Appeal has done – that compensation is not due because of the small amounts at stake in the proceedings in question. Such a reason, apart from being rendered immaterial by the fact that the European Court has already ruled that non-pecuniary damage had been sustained because of delay in the same action, is in any case incorrect, because the amount of what is at stake in an action in which non-compliance with reasonable time-limits has been ascertained can never have the effect of excluding non-pecuniary damage, given that the anxiety and distress resulting from the length of the proceedings normally also occur in cases in which the amounts at stake are small; hence this aspect may have the effect of reducing the amount of compensation but not of totally excluding it.

7 – In conclusion the decision appealed against must be quashed and the case remitted to the Rome Court of Appeal, which, in a different composition, will order payment to the applicant of the non-pecuniary damages payable as a result of the violation of the reasonable-time requirement for the period following 16 April 1996 alone, taking as a reference point payments of the same kind of damages by the European Court of Human Rights, from which it may diverge, but only to a reasonable extent (HR Court, 27 March 2003, *Scordino v. Italy*)”.

## *2. Case-law on the transfer of the right to compensation*

### **a) Judgment of the Court of Cassation no. 17650/02 deposited with the registry on 15 October 2002**

25. The Court of Cassation held as follows:

“...Where the victim of unreasonably lengthy proceedings dies prior to the entry into force of Law no. 89 of 2001 [known as the “Pinto Act”] this shall preclude a right [to just satisfaction] from arising and passing to the heirs, in accordance with the general rule that a person who has died cannot become entitled to a right conferred by an Act that is passed after their death...”

### **b) Judgment of the Court of Cassation no. 5264/03 deposited with the registry on 4 April 2003**

26. The Court of Cassation judges noted that the right to compensation for a violation of the right to a hearing within a reasonable time derived from the Pinto Act. The mechanism set in place by the European standard did not give applicants a cause of action before the domestic courts. Accordingly, the right to “just satisfaction” could neither be acquired nor transferred by a person who had already died by the time the Pinto Act came into force. The fact that the deceased had, while alive, lodged an application with the Strasbourg Court was not decisive. Section 6 of the Pinto Act did not constitute, as the applicants had maintained, a procedural standard bringing about a transfer of powers from the European Court to the domestic courts.

**c) Order of the Court of Cassation no. 11950/04 deposited with the registry on 26 June 2004**

27. In this case, which concerned the possibility or otherwise of transferring to heirs the right to compensation deriving from a breach of Article 6 § 1 on account of the length of the proceedings, the First Division of the Court of Cassation referred the case to the full court indicating that there was a conflict between the case-law authorities, that is, between the restrictive approach taken by the Court of Cassation in the earlier judgments regarding heirs and the Pinto Act and the four judgments delivered by the Court of Cassation, sitting as a full court, on 26 January 2004 to the extent that a less strict interpretation would lead to the conclusion that this right to compensation has existed since Italy ratified the European Convention on 4 August 1955.

**d) Extracts from judgment no. 28507/05 of the plenary Court of Cassation deposited with the registry on 23 December 2005**

28. In the case giving rise to the order mentioned above referring the case to the full court (see preceding paragraph), the Court of Cassation, sitting as a full court, established the following principles, thus preventing any further conflicting decisions being given by the courts:

(i) Law no. 848 of 4 August 1955, which ratified the Convention and made it enforceable, introduced into domestic legal order the fundamental rights, belonging to the category of rights conferred on the individual by public law, provided for in the first section of the Convention and which correspond to a large extent with those set forth in Article 2 of the Constitution. In that respect the Convention provisions are confirmatory and illustrative. ...

(ii) It is necessary to reiterate the principle that the act giving rise to the right to reparation conferred by domestic law corresponds to a breach of the provision in Article 6 of the Convention, which is immediately applicable in domestic law.

The distinction between the right to a hearing within a reasonable time, introduced by the European Convention on Human Rights (or even pre-existing as a constitutionally protected value), and the right to equitable reparation, which was allegedly introduced only by the Pinto Act, cannot be allowed in so far as the protection provided by the domestic courts does not depart from that previously offered by the Strasbourg Court, the domestic courts being bound to comply with the case-law of the European Court. ...

(iii) Accordingly, the right to equitable reparation for loss sustained as a result of the unreasonable length of proceedings prior to the entry into force of Law no. 89/2001 must be acknowledged by the domestic courts even in favour of the heirs of a party who introduced the proceedings before that

date, subject only to the condition that the claim has not already been lodged with the Strasbourg Court and the Court has not ruled on admissibility. ...

3. *Judgment of the Court of Cassation no. 18239/04, deposited with the registry on 10 September 2004, concerning the right to compensation of legal entities*

29. This judgment of the Court of Cassation concerned an appeal by the Ministry of Justice challenging the Court of Appeal's award of non-pecuniary damages to a juristic person. The Court of Cassation referred to the decision reached in the case of *Comingersoll v. Portugal* [GC], no. 35382/97, ECHR 2000-IV and, after referring to the four judgments of the full court delivered on 26 January 2004, found that its own case-law was not in line with the European Court. It held that there was no legal barrier to awarding just satisfaction to "juristic" persons according to the criteria of the Strasbourg Court. Accordingly, since the Court of Appeal had correctly decided the case the appeal was dismissed.

4. *Judgment of the Court of Cassation no. 8568/05, deposited with the registry on 23 April 2005, concerning the presumption of non-pecuniary damage*

30. The Court of Cassation made the following observations:

"... [Whereas] non-pecuniary damage is the normal, albeit not automatic, consequence of a breach of the right to a hearing within a reasonable time, it will be deemed to exist, without it being necessary to specifically prove it (directly or by presumption), on the basis of the objective fact of the breach, on condition that there are no special circumstances indicating the absence of any such damage in the actual case concerned (Cass. A.P. 26 January 2004 nos. 1338 and 1339).

- the assessment on an equitable basis of compensation for non-pecuniary damage is subject – on account of the specific reference in section 2 of Law no. 89 of 24 March 2001 to Article 6 of the European Convention on Human Rights (ratified by Law no. 848 of 4 August 1955) – to compliance with the Convention, in accordance with the judicial interpretation given by the Strasbourg Court (non-compliance with which results in a violation of the law), and must therefore, as far as possible, be commensurate, in substantive and not merely formal terms, with the amounts paid in similar cases by the European Court, it being possible to adduce exceptional circumstances that suggest themselves in the particular case, on condition that they are reasoned, not excessive and not unreasonable (Cass. A.P. 26 January 2004 no. 1340). ...

- a discrepancy in the method of calculation [between the Court's case-law and section 2 of the Pinto Act] shall not affect the general vocation of Law no. 89 of 2001 to meet the objective of awarding proper compensation for a breach of the right to a hearing within a reasonable time (vocation acknowledged by the European Court in, *inter alia*, a decision of 27 March 2003 in *Scordino v. Italy* (application no. 36813/97)), and accordingly shall not allow any doubt as to the compatibility of that domestic standard with the international commitments entered into by the Italian

Republic when ratifying the European Convention and the formal recognition, also at constitutional level, of the principle stated in Article 6 § 1 of that Convention...”

### III. OTHER RELEVANT PROVISIONS

#### **A. Third annual report on the excessive length of judicial proceedings in Italy for 2003 (administrative, civil and criminal justice)**

31. In the report CM/Inf/DH(2004)23, revised on 24 September 2004, the Ministers’ deputies made the following indications regarding an assessment of the Pinto remedy:

“...11. As regards the domestic remedy introduced in 2001 by the “Pinto Act”, a number of shortcomings remain, particularly in connection with the effectiveness of the remedy and its application in conformity with the Convention: in particular, the law does not provide yet for the acceleration of pending proceedings. ...

109. In the framework of its examination of the 1<sup>st</sup> annual report, the Committee of Ministers expressed concern at the fact that this legislation did not foresee the speeding up of the proceedings and that its application posed a risk of aggravating the backlog of the appeal courts. ...

112. It should be pointed out that in the framework of its examination of the 2<sup>nd</sup> annual report, the Committee of Ministers had noted with concern that the Convention had no direct effect and had consequently invited the Italian authorities to intensify their efforts at national level as well as their contacts with the different bodies of the Council of Europe competent in this field. ...”

#### **B. Interim Resolution ResDH(2005)114 concerning the judgments of the European Court of Human Rights and decisions by the Committee of Ministers in 2183 cases against Italy relating to the excessive length of judicial proceedings**

32. In this interim resolution the Ministers’ deputies indicated as follows:

“The Committee of Ministers

Noting ...

“...the setting-up of a domestic remedy providing compensation in cases of excessive length of proceedings, adopted in 2001 (the “Pinto” law), as well as the recent development of the case-law of the Court of cassation, increasing the direct effect of the case-law of the European Court in the Italian legal system, while noting

that this remedy still does not enable for acceleration of proceedings so as to grant effective redress to all victims;

Stressing that the setting-up of domestic remedies does not dispense states from their general obligation to solve the structural problems underlying violations;

Finding that despite the efforts undertaken, numerous elements still indicate that the solution to the problem will not be found in the near future (as evidenced in particular by the statistical data, the new cases before both domestic courts and the European Court, the information contained in the annual reports submitted by the government to the Committee and in the reports of the Prosecutor General at the Court of cassation);

...

Stressing the importance the Convention attaches to the right to fair administration of justice in a democratic society and recalling that the problem of the excessive length of judicial proceedings, by reason of its persistence and extent, constitutes a real danger for the respect of the rule of law in Italy; ...

URGES the Italian authorities to enhance their political commitment and make it their effective priority to meet Italy's obligation under the Convention and the Court's judgments, to secure the right to a fair trial within a reasonable time to all persons under Italy's jurisdiction. ..."

### **C. The European Commission for the efficiency of justice (CEPEJ)**

33. The European Commission for the efficiency of justice was set up at the Council of Europe by Resolution Res(2002)12 with the aim of (a) improving the efficiency and the functioning of the justice of member States with a view to ensuring that everyone within their jurisdiction can enforce their legal rights effectively, thereby generating increased confidence of the citizens in the justice system and (b) enabling a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice.

34. In its framework programme (CEPEJ (2004) 19 Rev 2 § (7) the CEPEJ noted that "the mechanisms which are limited to compensation are too weak and do not adequately incite the States to modify their operational process, and provide compensation only *a posteriori* in the event of a proven violation instead of trying to find a solution for the problem of delays."

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

#### A. The non-exhaustion of domestic remedies

##### 1. *The respondent Government*

35. The Government asked the Court to declare the application inadmissible for non-exhaustion of domestic remedies and accordingly to reconsider the Chamber's decision that an appeal to the Court of Cassation on points of law was not a remedy that had to be exhausted. In the Government's submission, the Court had erred in its decision *Scordino v. Italy* (dec.), no. 36813/97, ECHR 2003-IV) in finding that, as the Court of Cassation had always held that complaints about the amount of compensation related to questions of fact, which fell within the exclusive jurisdiction of the lower courts, an appeal on points of law was not a remedy that had to be exhausted. Admittedly, the Court of Cassation, which examined points of law, could not superimpose its own assessment of questions relating to the merits or the assessment of the facts and evidence on those of the lower courts. It did, however, have power to find that a decision of the lower courts was inconsistent with the correct interpretation of the law or contained grounds that were illogical or contradictory. In such a case it could set out the applicable legal principle or mark out the broad lines of the correct interpretation and remit the case to the lower court for a fresh assessment of the evidence on the basis of those directions. That submission had, moreover, been confirmed by the four judgments (nos. 1338, 1339, 1340 and 1341) delivered by the plenary Court of Cassation on 26 January 2004 (see paragraphs 23 and 24 above).

##### 2. *The applicant*

36. The applicant submitted that the Government were estopped from raising that question because they had never validly raised it before the Chamber. In any event the Government merely put forward arguments that had already been rejected by the Chamber in the admissibility decision and in its judgment on the merits of the case. He observed that up until the Court of Cassation's departure from precedent, which had not been until after the decision in *Scordino* (cited above), the Italian courts had not felt bound by the Court's case-law referred to by lawyers in appeals and that he was unaware of any judgment of the Court of Cassation prior to that departure from precedent in which it had entertained an appeal based solely on the

fact that the amount awarded bore no relation to the amounts awarded by the European Court. He also pointed out that, as far as his case was concerned, the Court of Appeal's decision had become final long before the Court of Cassation's departure from precedent, and therefore asked the Court to reject the Government's objection and confirm the judgment of 10 November 2004 (see paragraphs 15-17 of the Chamber judgment).

### 3. *The Court's assessment*

37. Under Article 1, which provides: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention", the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Articles 13 and 35 § 1 of the Convention.

38. The purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). The rule in Article 35 § 1 is based on the assumption, reflected in Article 13 (with which it has close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

39. Nevertheless, the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27; *Dalia v. France*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, pp. 87-88, § 38; and *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

40. By enacting the Pinto Act, Italy introduced a purely compensatory remedy for cases in which there had been a breach of the reasonable-time principle (see paragraph 22 above). The Court has already held that the remedy before the courts of appeal introduced by the Pinto Act was accessible and that there was no reason to question its effectiveness (see *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX). Moreover, having regard to the nature of the Pinto Act and the context in which it was passed, the Court went on to find that there were grounds for departing from the general principle that the exhaustion requirement should be assessed with reference to the time at which the application was lodged. That was the case

not only in respect of applications lodged after the date on which the Act came into force, but also of those which were already on the Court's list of cases by that date. It had taken into consideration, among other things, the transitional provision provided for in section 6 of the Pinto Act (see paragraph 22 above), which afforded Italian litigants a genuine opportunity to obtain redress for their grievances at national level for all applications currently pending before the Court that had not yet been declared admissible (see *Brusco*, *ibid.*).

41. In the *Scordino* case (cited above) the Court held that where applicants complained only of the amount of compensation and the discrepancy between that amount and the amount which would have been awarded under Article 41 of the Convention in just satisfaction, they were not required – for the purpose of exhausting domestic remedies – to appeal to the Court of Cassation against the Court of Appeal's decision. The Court based that conclusion on a study of some one hundred Court of Cassation judgments. In none of those judgments had that court entertained a complaint to the effect that the amount awarded by the Court of Appeal was insufficient in relation to the loss alleged or inadequate in the light of the Strasbourg case-law.

42. The Court notes that on 26 January 2004 the Court of Cassation, sitting as a full court, quashed four decisions in cases in which the existence or amount of non-pecuniary damage had been disputed. In so doing, it established the principle that “the court of appeal's determination of non-pecuniary damage in accordance with section 2 of Law no. 89/2001, although inherently based on equitable principles, must be done in a legally defined framework since reference has to be made to the amounts awarded, in similar cases, by the Strasbourg Court. Some divergence is permissible, within reason” (see paragraph 23 above).

43. The Court takes note of that departure from precedent and welcomes the Court of Cassation's efforts to bring its decisions into line with European case-law. It reiterates, furthermore, having deemed it reasonable to assume that the departure from precedent, in particular judgment no. 1340 of the Court of Cassation, must have been public knowledge from 26 July 2004. It has therefore held that, from that date onwards, applicants should be required to avail themselves of that remedy for the purposes of Article 35 § 1 of the Convention (see *Di Sante v. Italy* (dec.), no. 56079/00, 24 June 2004, and, *mutatis mutandis*, *Broca and Texier-Micault v. France*, nos. 27928/02 and 31694/02, § 20, 21 October 2003).

44. In the instant case the Grand Chamber, like the Chamber, notes that the time-limit for appealing to the Court of Cassation had expired before 26 July 2004 and considers that, in these circumstances, the applicant was dispensed from the obligation to exhaust domestic remedies. Consequently, without prejudging the question whether the Government can be regarded as

estopped from raising this objection, the Court considers that it must be dismissed.

## **B. Assessment of “victim” status**

### *1. The Chamber decision*

45. In its admissibility decision of 22 January 2004 the Chamber followed the decision in the *Scordino* case (cited above) according to which an applicant could still claim to be a “victim” within the meaning of Article 34 of the Convention where the amount awarded by the Court of Appeal was not considered by the Chamber as sufficient to repair the alleged loss and violation. In the present case, as the amount awarded to the applicant was not sufficient to amount to adequate redress the Chamber held that he could still claim to be a victim.

### *2. Submissions by those appearing before the Court*

#### **a) The Government**

46. The respondent Government submitted that the applicant was no longer a “victim” of a violation of Article 6 § 1 because he had obtained from the Court of Appeal a finding of a violation and a sum which should be regarded as adequate having regard to his conduct, the numerous adjournments at his request, the absence of the parties at a hearing and lawyers’ strikes. Furthermore, the length of the proceedings had worked to the applicant’s advantage since it had enabled him to delay payment of the amounts owing to his creditor.

47. The Government took the opportunity to ask the Court to clarify the various aspects of the reasoning that lead to its decisions, both in respect of the parts relating to a violation and regarding just satisfaction. They submitted that the Court should follow the approach used by the domestic courts and explain in each case how many years had to be regarded as “natural” for each stage of proceedings, how many might be acceptable having regard to the complexity of the case, how many delays were attributable to each party, the importance of the stakes in the proceedings, the outcome of the proceedings and how the just satisfaction to be awarded was calculated on the basis of those factors. They criticised the Chamber for failing to give a detailed examination in its judgment of 10 November 2004 of the reasoning of the domestic court. The Chamber had merely asserted that the amount awarded was insufficient without specifying the similarities or differences between the previous cases referred to by way of comparison and the proceedings in question.

48. In the Government's submission, the Court had to strike a fair balance between the requirement of clarity and respect for principles such as the States' margin of appreciation and the subsidiarity principle. The attempt to strike that balance had to be governed by the general rule that any factor to be taken into account which was stated loosely or vaguely in the Strasbourg case-law had to be considered with the greatest respect for the corresponding margin of appreciation to be enjoyed by each State without fear of being subsequently disavowed by the European Court owing to a different perception of a fact or its importance. The Government considered that the acknowledgement of the existence of damage and the determination of quantum were part of the assessment of evidence which fell within the jurisdiction of the domestic courts and was in theory outside the competence of the supranational court. Although the Court did admittedly have the power to review decisions submitted to it with a view to ensuring that the reasoning was neither manifestly unreasonable nor arbitrary and was consonant with logic and the lessons derived from experience actually encountered in the social context, it could not, however, impose its own criteria or substitute its own beliefs for that of the domestic courts in assessing the evidence.

49. The Government felt it important to explain the criteria used in Italian law and pointed out that the finding of a violation was independent of the existence of non-pecuniary damage. The Court of Cassation had asserted, though, that non-pecuniary damage was a normal consequence of a breach of the reasonable-time requirement that from then on did not have to be proved by the applicant. According to the Court of Cassation, it was up to the State to prove the contrary, that is, provide proof that in a particular case an inordinately long wait for a judgment had not occasioned the applicant any anxiety or distress but had been advantageous or that the applicant had been aware of having instituted or contested proceedings on the basis of erroneous arguments (Court of Cassation 29.3-11.5.2004 no. 8896), for example where they had been well aware from the outset that they had no chance of winning. Furthermore, under Article 41 the Court awarded just satisfaction if such was appropriate, so a finding of a violation could suffice. Accordingly, the Court should not be the only institution able to vary the amounts it awarded to the point of awarding nothing. They reiterated that, under Italian law, it was only the years beyond the reasonable time that had to be taken into account when assessing the damage.

50. At the hearing the Government indicated that as far as the procedural costs were concerned the applicant had obtained an order from the court for their reimbursement. With regard to the delay in paying the compensation, the Government pointed out that the present case had been communicated only in respect of the length of the civil proceedings and not regarding access to a tribunal on account of the delay in paying the amount awarded

by the Court of Appeal. Lastly, referring also to the information provided at the hearing in the *Scordino* case (no. 36813/97) the same day, the Government explained that as the amount earmarked in the budget in respect of Pinto cases had been insufficient in 2002 and 2003 it had been increased in 2004 and 2005.

For all the foregoing reasons, the Government argued that the applicant should no longer be regarded as a “victim” of a violation of Article 6 § 1 of the Convention.

**b) The applicant**

51. The applicant, for his part, considered that he was still a “victim” of the violation in that the amount that had been awarded him by the Court of Appeal was not only derisory but had also been paid late. In reply to the Government’s submission that his claim was unfounded, the applicant pointed out that the domestic proceedings were still pending. He also observed that all that could be obtained by lodging an application under the Pinto Act was compensation and that it had not in any way expedited the proceedings, which were still pending.

52. The applicant took this opportunity to point out the other flaws in the Pinto Act to which he had himself been exposed:

(a) in the first place, the relevant court of appeal was a long way away from the claimants’ place of residence. For every formality they had to travel 300 km, whereas before the Court everything could be done by fax or post;

(b) stamp duty and fees for registration in the list of cases had been payable (by decision of the Ministry of Justice – that is, the respondent – in a circular sent to the registries) until a decree of 7 March 2002;

(c) Pinto proceedings were always conditional (whether the applicant won or lost) on the payment of other expenses, including the heavy tax on registering the decision;

(d) applications had been dealt with at only one level of jurisdiction, without any possibility of appealing to the Court of Cassation in the event of an error of assessment, until the departure from precedent of 26 January 2004;

(e) consideration of the application in private (*camera di consiglio*) rather than in ordinary proceedings made it impossible to adduce evidence other than documents, and the court could request further evidence (but was not obliged to do so). The choice of this type of procedure by the legislature was intended to limit as far as possible the amount of compensation for damage by ensuring that the court gave its ruling in the light of the information available;

(f) the domestic criteria governing compensation for damage were entirely different from those of the Court;

(g) there was an inequality of treatment regarding the payment of costs and expenses: if the claimant won the amounts awarded by the courts of appeal were minimal, whereas if the claimant lost the amounts payable to the State were much higher.

Furthermore, the Pinto Act provided for payment within the limits of available resources. The funds available (approximately 6,500,000 euros) in 2002 had been ridiculously low given the thousands of applications that had then been pending before the Court. The amounts earmarked were still inadequate today, hence the delay in making payments. Once a decision had been obtained from the Court of Appeal, the State did not spontaneously make payment but obliged the applicants to serve the decision on the authorities, wait the statutory 120 days after service and then take out a writ, and sometimes apply for a garnishee order, which was not always successful because funds might not be available. This meant that, on average, two years elapsed between the date of the decision and the date when the Italian State actually paid the sum to the applicant, which was perfectly legitimate since the Pinto Act itself provided that “payment shall be within the limits of available resources”, that is, the limits of the – notoriously inadequate – sums that the State decided to set aside every year.

53. In the applicant’s submission, an analysis of the Pinto Act and the Italian courts’ manner of applying it showed that the purpose of the measures taken by the State was not to eliminate the delays but to create a remedy that would be such an obstacle that it would discourage claimants from lodging an application or continuing with one. The applicant was thus not only a victim of the chronic delays in proceedings but also of the subsequent frustrations resulting from the obstacles instituted with the Pinto remedy. Furthermore, the Pinto Act had increased the workload of the courts of appeal without any provision being made for a concomitant substantial increase in the number of judges, which could only have adverse effects on the judges’ work.

54. In reply to the criticism of the various Governments regarding the criteria articulated by the Chamber, the applicant observed that the length of the proceedings was so bound up with the Italian judicial system that the Government omitted to ask the Court what they should change in the system in order to eliminate the delays. Instead, the Government asked the Court to lay down guidelines regarding damage or authorise the courts to continue using guidelines that were totally different from those used by the Court so that they could carry on running the Italian system without introducing any changes to expedite proceedings. The applicant argued that the Government erred in its assessment of the position as it was not for the European Court of Human Rights to avoid giving judgments that conflicted with national law but, on the contrary, the national law (including the Pinto Act) that should not conflict with the Convention. In the applicant’s submission, the Government could not properly argue that in some cases delays in legal

proceedings gave applicants an advantage if they held out with unfounded arguments during proceedings, or if the stakes involved in the dispute were less than the just satisfaction awarded. The value of the application in question was of no relevance to the right to a hearing within a reasonable time and Article 6 did not require an applicant claiming the right to just satisfaction to have been successful. Furthermore, the Government's reasoning was one that was expressed with hindsight at the end of proceedings, and it was never possible to say beforehand what the outcome would be. If a case was lost after twenty years of proceedings the non-pecuniary damage incurred was all the greater, since if the person had known earlier that they would lose they would probably have arranged certain aspects of their life differently.

55. As to the adequacy of a finding of a violation, that assertion held true only for a State that committed few breaches – and these owing to exceptional circumstances – and possessed a sound judicial system. This was not the situation in Italy, which did nothing to put an end to these violations. Such conduct certainly could not be rewarded with the elimination of just satisfaction. On the contrary, in order to force the State to take measures to avoid violations the Court ought to increase the awards in its judgments against Italy until the reasons why justice was not delivered within a reasonable time were eliminated.

56. With regard to the comments relating to the subsidiarity principle, the applicant submitted that Article 13 could not be construed as allowing a State to adopt a domestic remedy which would determine just satisfaction for violations of fundamental rights recognised by the Court according to criteria that were completely different from those used by the Court. The Court therefore had a duty to intervene regarding domestic decisions in order to ensure full reparation of the consequences of violations of the rights and freedoms protected by the Convention. The Court's intervention was always possible where the domestic courts had made a decision impairing the effectiveness of the domestic remedy. To accept wholesale the "subsidiarity" argument was tantamount to depriving the Court of its function, which was to ensure that the Contracting States applied the Convention and its Protocols.

### *3. The intervening parties*

#### **a) The Czech Government**

57. In the Czech Government's submission, the Court should confine itself to ensuring that the consequences of the case-law policy choices made by the domestic courts were in keeping with the Convention. Its review should be more or less rigorous, depending on the margin of appreciation that the Court allowed national authorities. The Court should only ensure that, in accordance with Article 13 of the Convention, the national

authorities complied with the principles established in its case-law or applied the provisions of their own domestic law in such a way that applicants enjoyed a level of protection in respect of their rights and freedoms as guaranteed by the Convention that was greater than or equivalent to that which they would enjoy if the national authorities applied the Convention's provisions directly. The Court should not go any further except in cases where the outcome of action by the national authorities appeared, on the face of it, arbitrary.

58. The Czech Government acknowledged that the adequacy of the amount awarded at domestic level was one of the criteria of effectiveness of an application for compensation within the meaning of Article 13. However, in view of the wide margin of appreciation that should be available to the Contracting Parties in implementing Article 13, they considered that the Court should subsequently exercise only "limited control", thus restricted to satisfying itself that the national authorities had not made a "manifest error in assessment" of the non-pecuniary damage caused by the excessive length of judicial proceedings.

59. Moreover, as the Czech Government wanted to provide their country with a compensatory remedy in addition to the existing preventive domestic remedy, they asked the Court to provide as many guidelines as possible in that connection so that they could set in place a remedy which would incontestably be effective.

#### **b) The Polish Government**

60. In the Polish Government's submission, an assessment of the facts of the case with a view to determining whether the "reasonable time" had been exceeded was part of the examination of the evidence conducted by the domestic courts. It was therefore debatable to what extent a supranational body could intervene in this process. It was, rather, commonly accepted that in most cases the facts would have been established by the domestic courts and that the Court's task would be limited to examining whether the Convention had been complied with. The Court's case-law appeared to be confined to assessing whether the domestic courts' decisions, given in accordance with domestic procedure previously approved by the Court, had properly applied the general rules to the specific case. In the absence of precise indications for assessing the facts and calculating the amount of compensation, there were no grounds on which to dispute the decisions of the domestic courts. It should be borne in mind in this regard that the domestic courts had a discretion in assessing the facts and evidence.

61. Furthermore, in the very particular circumstances of some cases the mere finding of a violation sufficed to meet the requirement of an effective remedy and amounted to sufficient redress for the breach. That rule had been clearly established in the Court's case-law on other Articles of the Convention. In some cases, moreover, the excessive length of the

proceedings could be favourable to the parties and compensating them would therefore be extremely questionable.

**c) The Slovak Government**

62. In the Slovak Government's submission, the Court should adopt the same approach as in assessing the fairness of proceedings, a matter in respect of which it considered that its task was not to deal with the factual or legal mistakes allegedly made by the domestic courts unless such mistakes could have resulted in a breach of the rights and freedoms guaranteed by the Convention. Moreover, although Article 6 of the Convention guaranteed the right to a fair trial it did not lay down any rules on the admissibility of evidence or its assessment, which was therefore primarily a matter for regulation under national law by the domestic courts. Accordingly, when examining decisions of domestic courts on the amount of non-pecuniary damages awarded for delays in the proceedings, the Court should leave enough room for the courts' discretion in this respect since the domestic courts decided on delays in the proceedings on the basis of the same criteria as the Court – and were in a better position to analyse the causes and consequences and thus to determine the non-pecuniary damage on an equitable basis.

63. The Slovak Government pointed out that the decisions of the Slovak Constitutional Court concerning delays in proceedings were much more detailed than the Court's decisions. In their submission, the Court should examine the decisions of the domestic courts relating to the amounts awarded for non-pecuniary damage only with regard to whether these decisions were manifestly arbitrary and unfair and not whether the amounts awarded by the Court in similar circumstances were substantially higher. Moreover, the Slovak Government found it logical that the amounts awarded by the domestic courts for protractedness of proceedings were less than the amounts awarded by the Court because injured persons could obtain effective and rapid compensation in their own country without having to bring their case to the international court.

*4. The Court's assessment*

**a) Reiteration of the context peculiar to length-of-proceedings cases**

64. The Court will begin by responding to the observations of the different Governments regarding the lack of precision in its judgments both in respect of the reasons leading to a finding of a violation and awards in respect of non-pecuniary damage.

It feels it important to point out that the reason why it has been led to rule on so many length-of-proceedings cases is because certain Contracting Parties have for years failed to comply with the "reasonable-time"

requirement under Article 6 § 1 and have not provided for a domestic remedy for this type of complaint.

65. The situation has worsened on account of the large number of cases coming from certain countries, of which Italy is one. The Court has already had occasion to stress the serious difficulties it has had as a result of Italy's inability to resolve the situation. It has expressed itself on the subject in the following terms:

“The Court next draws attention to the fact that since 25 June 1987, the date of the *Capuano v. Italy* judgment (Series A no. 119), it has already delivered 65 judgments in which it has found violations of Article 6 § 1 in proceedings exceeding a “reasonable time” in the civil courts of the various regions of Italy. Similarly, under former Articles 31 and 32 of the Convention, more than 1,400 reports of the Commission resulted in resolutions by the Committee of Ministers finding Italy in breach of Article 6 for the same reason.

The frequency with which violations are found shows that there is an accumulation of identical breaches which are sufficiently numerous to amount not merely to isolated incidents. Such breaches reflect a continuing situation that has not yet been remedied and in respect of which litigants have no domestic remedy.

This accumulation of breaches accordingly constitutes a practice that is incompatible with the Convention.”

(see *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V; *Ferrari v. Italy* [GC], no. 33440/96, § 21, 28 July 1999; *A.P. v. Italy* [GC], no. 35265/97, § 18, 28 July 1999; and *Di Mauro v. Italy* [GC], no. 34256/96, § 23, ECHR 1999-V).

66. Thus the Court, like the Commission, after years of examining the reasons for the delays attributable to the parties under the Italian procedural rules, has had to resolve to standardize its judgments and decisions. This has allowed it to adopt more than 1,000 judgments against Italy since 1999 in civil length-of-proceedings cases. That approach has made it necessary to establish scales on equitable principles for awards in respect of non-pecuniary damage under Article 41, in order to arrive at equivalent results in similar cases.

All this has led the Court to award higher levels of compensation than those awarded by the Convention institutions prior to 1999 and ones which may differ from those applied in the event of a finding of other violations. This increase, far from being a punitive measure, was intended to fulfil two purposes. On the one hand it served to encourage States to find their own, universally accessible, solution to the problem and on the other hand it allowed applicants to avoid being penalised for the lack of domestic remedies.

67. The Court also considers it important to point out that, contrary to the Government's assertion, the Chamber has not in any way departed from its constant practice either regarding the assessment of the delays or regarding just satisfaction. Concerning the question of exceeding a

reasonable time, it reiterates that regard must be had to the circumstances of the case and the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities, and the importance of what was at stake for the applicant in the dispute (see, among many other authorities, *Comingersoll*, cited above, § 19). Furthermore, a closer analysis of the many judgments which post-date *Bottazzi* will enable the Government to see that there is a clear pattern in the amounts awarded in its judgments, since the amounts differ only in respect of the particular facts of each case.

**b) Principles established under the Court's case-law**

68. With regard to the observations concerning the subsidiarity principle, also made by the third parties, the Court notes that under Article 34 of the Convention it "may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. ..."

69. The Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *Burdov v. Russia*, no. 59498/00, § 30, ECHR 2002-III).

70. The Court also reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 32, §§ 69 et seq.; *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X).

71. The issue as to whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his or her situation. As it has already held in other length-of-proceedings cases, the question whether he or she has received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue. It is the Court's settled case-law that where the national authorities have found a violation and their decision constitutes appropriate and sufficient redress, the party concerned can no longer claim to be a victim within the meaning of Article 34 of the Convention (see *Holzinger v. Austria* (no. 1), no. 23459/94, § 21, ECHR 2001-I).

72. In so far as the parties appear to link the issue of victim status to the more general question of effectiveness of the remedy and seek guidelines on affording the most effective domestic remedies possible, the Court proposes

to address the question in a wider context by giving certain indications as to the characteristics which such a domestic remedy should have, having regard to the fact that, in this type of case, the applicant's ability to claim to be a victim will depend on the redress which the domestic remedy will have given him or her.

73. The best solution in absolute terms is indisputably, as in many spheres, prevention. The Court recalls that it has stated on many occasions that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see, among many other authorities, *Sißmann v. Germany*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1174, § 55, and *Bottazzi*, cited above, § 22). Where the judicial system is deficient in this respect, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach *a posteriori*, as does a compensatory remedy of the type provided for under Italian law for example.

74. The Court has on many occasions acknowledged that this type of remedy is "effective" in so far as it allows for an earlier decision by the court concerned (see, among other authorities, *Bacchini v. Switzerland* (dec.), no. 62915/00, 21 June 2005; *Kunz v. Switzerland* (dec.), no. 623/02, 21 June 2005; *Fehr and Lauterburg v. Switzerland* (dec.), no. 708/02 and 1095/02, 21 June 2005; *Holzinger (no. 1)* (cited above, § 22), *Gonzalez Marin v. Spain* (dec.), no. 39521/98, ECHR 1999-VII; and *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX).

75. It is also clear that for countries where length-of-proceedings violations already exist, a remedy designed only to expedite the proceedings – although desirable for the future – may not be adequate to redress a situation in which it is obvious that the proceedings have already been excessively long.

76. Different types of remedy may redress the violation appropriately. The Court has already affirmed this in respect of criminal proceedings, where it was satisfied that the length of proceedings had been taken into account when reducing the sentence in an express and measurable manner (see *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001).

Moreover, some States, such as Austria, Croatia, Spain, Poland and the Slovak Republic, have understood the situation perfectly by choosing to combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation (see, for example, *Holzinger (no. 1)*, cited above, § 22; *Slavicek v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII; *Fernandez-Molina Gonzalez and Others v. Spain* (dec.), no. 64359/01,

ECHR 2002-IX; *Michalak v. Poland* (dec.), no. 24549/03, 1 March 2005; *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX).

77. However, States can also choose to introduce only a compensatory remedy, as Italy has done, without that remedy being regarded as ineffective (see *Mifsud*, cited above).

78. The Court has already had occasion to reiterate in the *Kudla* judgment (cited above, §§154-55) that, subject to compliance with the requirements of the Convention, the Contracting States are afforded some discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their Convention obligation under that provision. It has also stressed the importance of the rules relating to the subsidiarity principle so that individuals are not systematically forced to refer to the Court in Strasbourg complaints that could otherwise, and in the Court's opinion more appropriately, have been addressed in the first place within the national legal system.

79. Accordingly, where the legislature or the domestic courts have agreed to play their true role by introducing a domestic remedy the Court will clearly have to draw certain conclusions from this. Where a State has made a significant move by introducing a compensatory remedy, the Court must leave a wider margin of appreciation to the State to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned. It will, in particular, be easier for the domestic courts to refer to the amounts awarded at domestic level for other types of damage – personal injury, damage relating to a relative's death or damage in defamation cases for example – and rely on their innermost conviction, even if that results in awards of amounts that are lower than those fixed by the Court in similar cases.

80. In accordance with its case-law on the interpretation and application of domestic law, while the Court's duty, under Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention.

Moreover, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 86, to be published in ECHR 2005).

81. The Court is therefore required to verify whether the way in which the domestic law is interpreted and applied produces consequences that are consistent with the principles of the Convention as interpreted in the light of the Court's case-law. This is especially true where, as the Italian Court of

Cassation has quite rightly observed (see paragraph 24 above), the domestic law refers explicitly to the provisions of the Convention. This supervisory role should be easier in respect of States that have effectively incorporated the Convention into their legal system and consider the rules to be directly applicable since the highest courts of these States will normally assume responsibility for enforcing the principles determined by the Court.

Accordingly, a clear error in assessment on the part of the domestic courts may also arise as a result of a misapplication or misinterpretation of the Court's case-law.

82. The principle of subsidiarity does not mean renouncing all supervision of the result obtained from using domestic remedies, otherwise the rights guaranteed by Article 6 would be devoid of any substance. In that connection it should be reiterated that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 45, ECHR 2001-VIII). This is particularly true for the guarantees enshrined in Article 6, in view of the prominent place held in a democratic society by the right to a fair trial with all the guarantees under Article 6 (see, *mutatis mutandis*, *Prince Hans-Adam II of Liechtenstein*, cited above, § 45).

#### **c) Application of the foregoing principles**

83. It follows from the foregoing principles that the Court is required to verify that there has been an acknowledgement, at least in substance, by the authorities of a violation of a right protected by the Convention and whether the redress can be considered as appropriate and sufficient (see, *inter alia*, *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001; *Jensen v. Denmark* (dec.), no. 48470/99, 20 March 2003; and *Nardone v. Italy*, no. 34368/98, 25 November 2004).

##### *i. The finding of a violation*

84. The first condition, which is the finding of a violation by the national authorities, is not in issue since if an appeal court were to award damages without having first expressly found a violation, the Court would necessarily conclude that such a finding had been made in substance as, under the Pinto Act, an appeal court cannot make an award unless a reasonable time has been exceeded (see *Capogrossi v. Italy* (dec.), no. 62253/00, 21 October 2004).

##### *ii. The characteristics of the redress*

85. With regard to the second condition, namely, appropriate and sufficient redress, the Court has already indicated that even if a remedy is "effective" in that it allows for an earlier decision by the courts to which the case has been referred or the aggrieved party is given adequate

compensation for the delays that have already occurred, that conclusion applies only on condition that an application for compensation remains itself an effective, adequate and accessible remedy in respect of the excessive length of judicial proceedings (see *Mifsud*, cited above).

Indeed, it cannot be ruled out that excessive delays in an action for compensation will affect whether the remedy is an adequate one (see *Paulino Tomas v. Portugal* (dec.), no. 58698/00, ECHR 2003-VIII; *Belinger v. Slovenia*, (dec.) no. 42320/98, 2 October 2001; and, *mutatis mutandis*, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 156, ECHR 2004-XII).

86. In that connection the Court reiterates its case-law to the effect that the right of access to a tribunal guaranteed by Article 6 § 1 of the Convention would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see, *inter alia*, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, pp. 510-11, § 40 et seq., and *Metaxas v. Greece*, no. 8415/02, § 25, 27 May 2004).

87. The Court has pointed out in civil length-of-proceedings cases that the enforcement proceedings are the second stage of the proceedings and that the right asserted does not actually become effective until enforcement (see, among other authorities, *Di Pede v. Italy* and *Zappia v. Italy*, judgments of 26 September 1996, *Reports* 1996-IV, p. 1384, §§ 22, 24 and 26, and pp. 1411-12, §§ 18, 20, 22, and, *mutatis mutandis*, *Silva Pontes v. Portugal*, judgment of 23 March 1994, Series A no. 286-A, p. 14, § 33).

88. The Court has also stated that it is inappropriate to require an individual who has obtained judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction. It follows that the late payment, following enforcement proceedings, of amounts owing to the applicant cannot cure the national authorities' long-standing failure to comply with a judgment and does not afford adequate redress (see *Metaxas*, cited above, § 19, and *Karahalios v. Greece*, no. 62503/00, § 23, 11 December 2003). Moreover, some States, such as Slovakia and Croatia, have even stipulated a date by which payment should be made, namely two and three months respectively (see *Andrášik and Others v. Slovakia*, and *Slavicek v. Croatia*, cited above).

The Court can accept that the authorities need time in which to make payment. However, in respect of a compensatory remedy designed to redress the consequences of excessively lengthy proceedings that period should not generally exceed six months from the date on which the decision awarding compensation becomes enforceable.

89. As the Court has already reiterated on many occasions, it is not open to a State authority to cite lack of funds as an excuse for not honouring a

judgment debt (see, among many other authorities, *Burdov*, cited above, § 35).

90. With regard to the more or less summary nature of compensation proceedings, it should be noted that a remedy affording compensation within a reasonable time may well be subject to procedural rules that are not exactly the same as for ordinary applications for damages. It is for each State to determine, on the basis of the rules applicable in its judicial system, which procedure will best meet the criterion of “effectiveness”, provided that the procedure conforms to the principles of fairness guaranteed by Article 6 of the Convention.

91. Lastly, the Court finds it reasonable that in this type of proceedings where the State, on account of the poor organisation of its judicial system, forces litigants – to some extent – to have recourse to a compensatory remedy, the rules regarding legal costs may be different and thus avoid placing an excessive burden on litigants where their action is justified. It might appear paradoxical that, by imposing various taxes – payable prior to the lodging of an application or after the decision – the State takes away with one hand what it has awarded with the other to repair a breach of the Convention. Nor should the costs be excessive and constitute an unreasonable restriction on the right to lodge such an application and thus an infringement of the right of access to a tribunal. On this point the Court notes that in Poland applicants are reimbursed the court fee payable on lodging a complaint if their complaint is considered justified (see *Charzyński v. Poland* (dec.), no. 15212/03, to be published in ECHR 2005).

92. Regarding violations of the reasonable-time requirement, one of the characteristics of sufficient redress which may remove a litigant’s victim status relates to the amount awarded as a result of using the domestic remedy. The Court has already had occasion to indicate that an applicant’s victim status may also depend on the amount of compensation awarded at domestic level on the basis of the facts about which he or she complains before the Court (see *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001, and *Jensen and Rasmussen v. Denmark*, cited above).

93. With regard to pecuniary damage, the domestic courts are clearly in a better position to determine the existence and quantum. Moreover, that point was not disputed by the parties or interveners.

94. Regarding non-pecuniary damage, the Court, like the Italian Court of Cassation (see its judgment no. 8568/05, paragraph 30 above), assumes that there is a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage. The Court also accepts that, in some cases, the length of proceedings may result in only minimal non-pecuniary damage or no non-pecuniary damage at all (see *Nardone*, cited above). The domestic courts will then have to justify their decision by giving sufficient reasons.

95. Moreover, in the Court's view, the level of compensation depends on the characteristics and effectiveness of the domestic remedy.

96. The Court can also perfectly well accept that a State which has introduced a number of remedies, one of which is designed to expedite proceedings and one to afford compensation, will award amounts which – while being lower than those awarded by the Court – are not unreasonable, on condition that the relevant decisions, which must be consonant with the legal tradition and the standard of living in the country concerned, are speedy, reasoned and executed very quickly (see *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004).

However, where the domestic remedy has not met all the foregoing requirements, it is possible that the threshold in respect of which the amount will still allow a litigant to claim to be a “victim” will be higher.

97. It is even conceivable that the court determining the amount of compensation will acknowledge its own delay and that accordingly, and in order not to penalise the applicant later, it will award a particularly high amount of compensation in order to make good the further delay.

*iii. Application to the present case*

98. The four-month period prescribed by the Pinto Act complies with the requirement of speediness necessary for a remedy to be effective. The only obstacle to this may arise with appeals to the Court of Cassation in respect of which no maximum period for giving a ruling has been fixed. In the instant case the judicial phase lasted from 10 January 2002 to 3 September 2002, that is, nearly eight months, which, even if it exceeds the statutory period, is still reasonable.

99. However, the Court finds it unacceptable that the applicant had to wait more than fifteen months, after the decision was deposited with the registry, before receiving his compensation and was obliged to bring enforcement proceedings occasioning him further costs.

100. The Court would stress the fact that, in order to be effective, a compensatory remedy must be accompanied by adequate budgetary provision so that effect can be given within six months of their being deposited with the registry to decisions of the courts of appeal awarding compensation, which, in accordance with the Pinto Act, are immediately enforceable (section 3(6) of the Pinto Act – see paragraph 22 above).

101. Similarly, as regards procedural costs, certain fixed expenses (such as the fee for registering the judicial decision) may significantly hamper the efforts made by applicants to obtain compensation. The Court draws the Government's attention to these various aspects with a view to eradicating at the source problems that may give rise to further applications.

102. In assessing the amount of compensation awarded by the court of appeal, the Court considers, on the basis of the material in its possession,

what it would have done in the same position for the period taken into account by the domestic court.

103. According to the documents provided by the Government for the hearing, there is no disproportion in Italy between the amounts awarded to heirs for non-pecuniary damage in the event of a relative's death or those awarded for physical injury or in defamation cases and those generally awarded by the Court under Article 41 in length-of-proceedings cases. Accordingly, the level of compensation generally awarded by the courts of appeal in Pinto applications cannot be justified by this type of consideration.

104. Even if the method of calculation provided for in domestic law does not correspond exactly to the criteria established by the Court, an analysis of the Court's case-law relating to awards of just satisfaction for excessively lengthy proceedings should enable the courts of appeal to award sums that are not unreasonable in comparison with the awards made by the Court in similar cases.

105. In the present case, the Court considers that the case was not complex. It notes that, in accordance with the Court's case-law, the Court of Appeal found that despite the adjournments that were not attributable to the State the proceedings had been excessively long. The applicant's conduct does not appear to be a significant factor justifying a substantial reduction in the compensation. The Court of Appeal's decision is not very explicit, however. The Court observes that the amount awarded – EUR 1,000 for proceedings that lasted more than thirteen years – is approximately 8% of what it generally awards in similar Italian cases. This factor alone leads to a result which is manifestly unreasonable having regard to its case-law, even for proceedings in which the stakes involved may justify a reduction in the amount awarded. The Court will revert to this matter in the context of Article 41 (see paragraph 144 below).

106. In conclusion, and having regard to the fact that various requirements have not been satisfied, the Court considers that the redress was insufficient. As the second condition – appropriate and sufficient redress – has not been fulfilled, the Court considers that the applicant can in the instant case still claim to be a “victim” of a breach of the “reasonable-time” requirement.

Accordingly, this objection by the Government must also be dismissed.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

107. The applicant complained of a breach of Article 6 § 1 of the Convention, which provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

108. On 6 December 2002 the applicant informed the Court that he was not complaining of the manner in which the Court of Appeal had assessed the delays, but of the derisory amount of damages awarded and, on 13 February 2004, he added the complaint that the sums had still not been paid.

109. In its judgment, the Chamber found that there had been a breach of Article 6 § 1 because the length of the proceedings did not satisfy the “reasonable-time” requirement and that this was another example of the practice referred to in the *Bottazzi* judgment (see §§ 22-23 of the Chamber judgment).

110. According to the applicant, the Pinto Act had been approved hastily in order to stem the tide of applications against Italy and the many judgments finding a violation, which had given rise to the finding of a practice in Italy incompatible with the Convention. By taking some of the judges off court-of-appeal cases to work on Pinto applications, instead of appointing sufficient numbers of new ones, the Government had merely increased the backlog in the courts of appeal. The applicant did not see how that could prevent further violations.

111. The Government disputed the wording adopted in the *Bottazzi* judgment (cited above, § 22) regarding the existence of a “practice” incompatible with the Convention since in the present case there had not been any tolerance on the part of the State, which had taken numerous measures, including the Pinto Act, to prevent further violations.

#### **A. Period to be considered**

112. The period to be taken into consideration began on 3 December 1988, when an order to pay was challenged in the Benevento District Court, and were still pending at first instance on 21 June 2002, when the Court of Appeal gave judgment. At that date it had therefore already lasted more than thirteen years and six months for one level of jurisdiction.

113. The Court notes that the Court of Appeal probably assessed the length of proceedings at the date of its decision, namely, 21 June 2002. As the proceedings were still pending at first instance on 12 October 2005, a period of more than three years and three months could not be taken into account by the Court of Appeal.

114. The Court notes that the Government did not dispute the length taken into consideration by the Chamber. It points out, though, that as the final domestic decision has not yet been delivered the applicant can still, if he wants to complain of the length of time that has elapsed since the period already examined by the Court of Appeal, go back before a court of appeal seeking application of the new precedent set by the Court of Cassation on 26 January 2004 (see judgment no. 1339). Since the remaining period is at

least more than three years and three months, it is amply sufficient in itself to amount to a second breach of the same set of proceedings (see *Rotondi v. Italy*, no. 38113/97, §§ 14-16, 27 April 2000, and *S.A.GE.MA S.N.C. v. Italy*, no. 40184/98, §§ 12-14, 27 April 2000). Accordingly, the Court considers that since the applicant can rely on the departure from precedent if he wishes to obtain a second finding of a violation it does not have to examine the domestic proceedings in their entirety but can confine itself to the period that has already been examined by the Court of Appeal (see *Gattuso v. Italy*, (dec.), no. 24715/04, 18 November 2004).

### **B. Reasonableness of the length of the proceedings**

115. The Court has already reiterated the reasons that led it to conclude in the four judgments against Italy of 28 July 1999 (see *Bottazzi*, cited above, § 22; *Ferrari*, cited above § 21; *A.P.*, cited above, § 18; and *Di Mauro*, cited above, § 23) that there was a practice in Italy (see paragraph 65 above).

116. The Court notes that, as the Government have stressed, a domestic remedy has since been introduced. However, that has not changed the substantive problem, namely, the fact that the length of proceedings in Italy continues to be excessive. The annual reports of the Committee of Ministers on the excessive length of judicial proceedings in Italy (see, *inter alia*, CM/Inf/DH(2004)23 revised, and Interim Resolution ResDH(2005)114) scarcely seem to reflect substantial changes in this area. Like the applicant, the Court does not see how the introduction of the Pinto remedy at domestic level has solved the problem of excessively lengthy proceedings. It has admittedly saved the Court the trouble of finding these violations, but the task has simply been transferred to the courts of appeal, which were already overburdened. Furthermore, given the occasional divergence between the case-law of the Court of Cassation (see paragraphs 23-30 above) and that of the Court, the latter is again required to give a decision as to the existence of such violations.

117. The Court emphasises once again that Article 6 § 1 of the Convention obliges the Contracting States to organise their legal systems so as to enable the courts to comply with its various requirements. It wishes to reaffirm the importance of administering justice without delays which might jeopardise its effectiveness and credibility (see *Bottazzi*, cited above, § 22). Italy's position in this regard has not changed sufficiently to call into question the conclusion that this accumulation of breaches constitutes a practice that is incompatible with the Convention.

118. The Court notes that in the present case the Court of Appeal also found that a reasonable time had been exceeded in respect of the same period as the one taken into consideration by the Court. However, the fact that the "Pinto" proceedings, examined as a whole, and particularly the

execution stage, did not cause the applicant to lose his “victim” status constitutes an aggravating circumstance regarding a breach of Article 6 § 1 for exceeding the reasonable time. The Court will therefore revert to this issue under Article 41.

119. After examining the facts in the light of the information provided by the parties and the aforementioned practice, and having regard to its case-law on the subject, the Court considers that in the present case the length of the proceedings was excessive and failed to meet the “reasonable-time” requirement.

Accordingly, there has been a violation of Article 6 § 1.

### III. ALLEGED VIOLATION OF ARTICLES 13, 17 AND 34 OF THE CONVENTION

120. In the pleadings lodged with the Court in 2005 the applicant appeared to consider that Articles 13 and 17 had been breached and asked the Court to find that a Pinto application was not an effective remedy on account of the obstacles it had created and the manner in which it had been applied. He also asked the Court to rule on a possible violation of Article 34 of the Convention since, given the series of obstacles constituted by the Pinto Act before an application could be lodged with the Court, it could be considered that there had been an interference with the right of individual application.

These Articles are worded as follows:

#### **Article 13**

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

#### **Article 17**

“Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

#### **Article 34**

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

121. On the assumption that the arguments put forward can be regarded as new complaints under Articles 13, 17 and 34 and are not only grounds in support of submissions under Article 6 § 1 of the Convention, the Court notes that they were raised for the first time before it in the pleadings submitted to the Grand Chamber in 2005. Consequently, they are not covered by the admissibility decision of 20 November 2003 which marks out the limits within which the Court must place itself (see, among other authorities, *mutatis mutandis*, *Assanidzé v. Georgia* [GC], no. 71503/01, § 162, ECHR 2004-II). It follows that these complaints are outside the scope of examination of the case as it has been referred to the Grand Chamber.

#### IV. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

##### A. Article 46 of the Convention

122. Under this provision:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

123. The Court reiterates that in the context of the execution of judgments in accordance with Article 46 of the Convention, a judgment in which it finds a breach of the Convention imposes on the respondent State a legal obligation under that provision to put an end to the breach and to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate. It follows, *inter alia*, that a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Assanidzé v. Georgia*, cited above, § 198, and *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 487, ECHR 2004-VII).

124. Furthermore, it follows from the Convention, and from Article 1 in particular, that in ratifying the Convention the Contracting States undertake

to ensure that their domestic legislation is compatible with it (see *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I).

125. Hundreds of cases are currently pending before the Court in respect of awards made by the courts of appeal in “Pinto” proceedings prior to the Court of Cassation’s departure from precedent and/or the delay in payment of the amounts in question. The Court, while acknowledging with satisfaction the favourable developments in Italian case-law, and particularly the recent judgment of the plenary Court of Cassation (see paragraph 28 above), regrets to observe that where a deficiency that has given rise to a violation has been put right, another one related to the first one appears: in the present case the delay in executing decisions. It cannot over-emphasise the fact that States must equip themselves with the means necessary and adequate to ensure that all the conditions for providing effective justice are guaranteed.

126. In its Recommendation of 12 May 2004 (Rec. (2004)6) the Committee of Ministers welcomed the fact that the Convention had now become an integral part of the domestic legal order of all States Parties while recommending that member States ensure that domestic remedies existed and were effective. In that connection the Court feels it important to stress that although the existence of a remedy is necessary, it is not in itself sufficient. The domestic courts must be able, under domestic law, to apply the European case-law directly and their knowledge of this case-law has to be facilitated by the State in question. The Court refers in this regard to the contents of the Recommendations of the Committee of Ministers on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the Court (Rec (2002)13) of 18 December 2002) and on the European Convention on Human Rights in university education and professional training (Rec (2004)4) of 12 May 2004), not forgetting the Resolution of the Committee of Ministers (Res (2002)12) setting up the CEPEJ (see paragraphs 33-34 above) and the fact that at the Warsaw Summit in May 2005 the Heads of State and Governments of the member States decided to develop the evaluation and assistance functions of the CEPEJ.

In the same Recommendation of 12 May 2004 (Rec. (2004)6) the Committee of Ministers also reiterated that the States had the general obligation to solve the problems underlying violations found.

127. The Court reiterates that, subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court’s judgment (see *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V).

128. Without seeking to determine what measures may be taken by the respondent State in order to comply with its obligations under Article 46 of

the Convention, the Court would draw its attention to the conditions indicated above (see paragraphs 68-106) regarding the possibility for a person to still claim to be a “victim” in this type of case and invite it to take all measures necessary to ensure that the domestic decisions are not only in conformity with the case-law of this Court but also executed within six months of being deposited with the registry

## **B. Article 41 of the Convention**

129. 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.”

### *1. The Chamber judgment*

130. In its judgment the Chamber gave an indication of the method of calculation used by the Court in determining an equitable assessment of the non-pecuniary damage sustained as a result of the length of civil proceedings and the possibility of reducing that sum on account of the existence of a domestic remedy (see paragraph 26 of the judgment).

### *2. Submissions by those appearing before the Court*

#### **a) The respondent Government**

131. The Government submitted that the judgment of 10 November 2004 represented a departure from the Court’s settled case-law and asked it to revert to its previous practice, which conformed to Convention principles. They noted that the criteria established were imprecise, particularly regarding the possibilities of reducing the amounts initially obtained. In their submission, the amount of just satisfaction should be calculated only by reference to the delays attributable to the State.

#### **b) The applicant**

132. The applicant referred to the considerable difference in standard of living between the third-party States and Italy and submitted that the level of compensation could not therefore be the same. He noted that compensation served as a coercive measure against non-complying States that were bound by their undertaking under Article 1 of the Convention to respect the fundamental rights and liberties recognised by the Convention. In his submission, a richer State could properly be ordered to pay higher amounts than those required from poorer ones in order to encourage it to remedy its judicial system, particularly where the State in question was

found to have committed the same type of violations for dozens of years in respect of thousands of cases. He noted that the criteria established in the judgment in question had merely revealed the criteria that had been applied for a very long time by the Court and were perfectly compatible with the standard of living of Italian citizens. He stated that Italian lawyers, who had access to the judgments in French or English – for want of an Italian version – had already succeeded in deducing from the Court’s judgments all the criteria now being disputed by the Government. He submitted further that the Court could not be expected to draw up an exhaustive list of all the possibilities of reducing or increasing awards. He argued, lastly, that it was down to the domestic courts to consult the Court’s case-law in order to find the Court’s response to a given situation.

### *3. The intervening parties*

#### **a) The Czech Government**

133. As the Czech Government had decided, in addition to introducing a preventive remedy, to enact a law providing for a compensatory remedy, they felt obliged to propose a law that would be sufficiently foreseeable. They referred to difficulties in that regard, submitting that neither the Convention nor the Court’s case-law provided sufficient clarification. They requested more information about the criteria used by the Court, cases that could be regarded as “similar” and the threshold level of the “reasonable” relation.

#### **b) The Polish Government**

134. In the Polish Government’s submission, the Court should indicate what just satisfaction consisted of. If precise indications were not given, inconsistencies were likely to arise between domestic case-law and the Court’s case-law. Applicants and Governments alike would find it very difficult to establish general rules concerning just satisfaction from the Court’s case-law. Accordingly, the domestic courts were not in a position to rely on the Court’s case-law and make decisions compatible with it.

#### **c) The Slovak Government**

135. The Slovak Government appreciated the attempt made by the Court to specify the criteria for determining awards in respect of non-pecuniary damage. However, they added that the considerations on which the Court based its determination of non-pecuniary damage should form part of the reasons for its decision. It was only in that way that the Court’s judgments would become clear instructions for the domestic courts, which determined awards in respect of non-pecuniary damage caused by delays in the proceedings. In the Slovak Government’s submission, it was impossible to

translate into figures all these aspects or to foresee every situation that might arise. The Court was not expected to define a precise formula by which the amount awarded for non-pecuniary damage flowing from the protractedness of proceedings could be calculated or to determine precise amounts. It was, in their view, more important that the Court gave sufficient justification in its decisions for the manner in which the criteria to which regard was had when assessing the reasonableness of the length of the proceedings were then taken into account to determine the amount awarded for non-pecuniary damage arising from the delays in the proceedings. It was clear from the foregoing that applicants should be awarded the same amount in comparable cases.

#### *4. The Court's criteria*

136. In reply to the Governments, the Court states at the outset that by “similar cases” it means any two sets of proceedings that have lasted for the same number of years, for an identical number of levels of jurisdiction, with stakes of equivalent importance, much the same conduct on the part of the applicant and in respect of the same country.

Moreover, it shares the Slovak Government's view that it would be impossible and impracticable to try to provide a list of detailed explanations covering every eventuality and considers that all the necessary elements can be found in its previous decisions available in the Court's case-law database.

137. It indicates next that the amount it will award in respect of non-pecuniary damage may be less than that indicated in its case-law where the applicant has already obtained a finding of a violation at domestic level and compensation by using a domestic remedy. Apart from the fact that the existence of a domestic remedy is fully in 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 (see paragraph 26 of the Chamber judgment).

138. The Court considers, however, that where an applicant can still claim to be a “victim” after exhausting that domestic remedy he or she must be awarded the difference between the amount obtained from the court of appeal and an amount that would not have been regarded as manifestly unreasonable compared with the amount awarded by the Court if it had been awarded by the court of appeal and paid speedily.

139. Applicants should also be awarded an amount in respect of stages of the proceedings that may not have been taken into account by the domestic courts in the reference period where they can no longer take the case back before the court of appeal seeking application of the change of position adopted by the Court of Cassation on 26 January 2004 (see its judgment no. 1339, paragraph 24 above) or the remaining length was not in

itself sufficiently long to be regarded as amounting to a second violation in respect of the same proceedings.

140. Lastly, the fact that an applicant who, in order to comply with the decision adopted in the *Brusco* case (cited above), had endeavoured to use the new domestic remedy by applying to the court of appeal after lodging an application with the Commission, has then had to endure a further delay while waiting for payment of a sum due from the State will lead the Court to order the Government to pay the applicant a further sum in respect of those months of frustration.

#### *5. Application of the foregoing criteria to the instant case*

##### **a) Damage**

141. The applicant claimed EUR 10,000 for the pecuniary damage sustained on account of having to bear the domestic procedural costs incurred as a result of the length of the proceedings and because the Court of Appeal did not award the lawyers' fees in full. He also claimed EUR 15,000 for non-pecuniary damage.

142. The Government disputed those claims and submitted that the finding of a violation would in itself constitute sufficient just satisfaction.

143. With regard to the claim for domestic procedural costs, the Court notes that the applicant omitted to itemise particulars of all his claims and provide the necessary supporting documents as required by Rule 60 of the Rules of Court. Accordingly, the Court decides to make no award under this head.

144. In respect of non-pecuniary damage, however, the Court finds that on the basis of the circumstances of the present case (see paragraphs 105 and 112-14 above) it would have awarded, in the absence of domestic remedies, the sum of EUR 13,000. It notes that the applicant was awarded EUR 1,000 by the Court of Appeal, which is approximately 8 % of what the Court would have awarded him. In the Court's view, this factor in itself leads to a result that is manifestly unreasonable in the light of the criteria established in its case-law.

Having regard to the characteristics of the domestic remedy chosen by Italy and the fact that, notwithstanding this national remedy, the Court has found a violation, it considers, ruling on an equitable basis, that the applicant should be awarded EUR 4,900.

To that amount should be added EUR 1,400 for the further frustration arising from the delay in paying the amount due from the State, which was not paid until an unspecified date after 27 May 2004.

145. Accordingly, the applicant is entitled to compensation for non-pecuniary damage in the sum of EUR 6,300, plus any tax that may be chargeable on that amount.

**b) Costs and expenses**

146. The applicant also claimed EUR 3,534.94 for the costs and expenses incurred before the Chamber and EUR 15,969.98 for the written and oral proceedings before the Grand Chamber, with a portion of that sum being payable by the third-party Governments. Referring to the judgment of *Scozzari and Giunta v. Italy* ([GC], nos. 39221/98 and 41963/98, §§ 255-58, ECHR 2000-VIII), the lawyers who represented the applicant before the Chamber also requested that the fees be paid directly to them.

147. The Government did not express a view on the costs claimed before the Chamber, but pointed out that the claim in respect of the proceedings before the Grand Chamber was disproportionate.

148. Regarding the claim against the third-party Governments, the Court reiterates that the present case is directed only against Italy and that it is only in respect of that country that it has found a violation of the Convention. Accordingly, any request for an order against another country for the reimbursement of costs and expenses must be rejected.

149. Moreover, according to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. In the present case, having regard to the evidence before it, the above-mentioned criteria and the length and complexity of the proceedings before the Court, it finds the amount claimed by the lawyer to be excessive in view of the work done. Furthermore, given that a legal team was formed for the various cases being examined concurrently (see paragraph 9 above), the Court considers that the case is distinguishable from the case of *Scozzari* (cited above) and that the claim by the lawyers of the defence team should not be granted. It considers that the amount awarded by the Chamber should be confirmed for the proceedings before it, that is, EUR 2,000, and the applicant awarded EUR 3,000 for the work before the Grand Chamber, that is, a total sum of EUR 5,000, plus any tax that may be chargeable on that amount.

**c) Default interest**

150. 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 as to the non-exhaustion of domestic remedies;
2. *Holds* that the applicant can claim to be a "victim" for the purposes of Article 34 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that the other complaints under Articles 13, 17 and 34 of the Convention fall outside the scope of its examination;
5. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
    - (i) EUR 6,300 (six thousand three hundred euros) in respect of non-pecuniary damage;
    - (ii) EUR 5,000 (five thousand euros) in respect of 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 March 2006.

Luzius WILDHABER  
President

T.L. EARLY  
Deputy to the Registrar

