



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

SECOND SECTION

CASE OF DELLE CAVE AND CORRADO v. ITALY

(Application no. 14626/03)

JUDGMENT

STRASBOURG

5 June 2007

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

In the case of Delle Cave and Corrado v. Italy,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

András Baka,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Antonella Mularoni,

Danutė Jočienė,

Dragoljub Popović, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 15 May 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 14626/03) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Italian nationals, Mr Giovanni Delle Cave and Mrs Anna Corrado (“the applicants”), on 11 April 2003.

2. The applicants were represented by Ms M. Rescigno and Mr A. Caruso, lawyers practising in Cicciano (Naples). The Italian Government (“the Government”) were represented by their Agent, Mr I. Braguglia, their Co-Agent, Mr F. Crisafulli, and their deputy Co-Agent Mr N. Lettieri.

3. On 24 May 2004 the Court decided to give notice of the application to the Government. It further decided, under Article 29 § 3 of the Convention, to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4 The applicants were born in 1954 and 1956 respectively and live in Cicciano (Naples).

A. The main proceedings

5. On 21 April 1993, the applicants, acting both in their own names and as representatives of their son S.D.C., then a minor, sued the insurance company R. and Mr V.B. in Naples District Court, seeking to obtain compensation for damage sustained by their son in a road traffic accident.

6. Preparation of the case for hearing began on 23 September 1993. Two hearings were initially scheduled for 15 and 17 March 1994 but were adjourned: one of the court's own motion and the other for examination of evidence.

7. At a hearing of 8 November 1994, upon the applicants' request, the judge in charge of preparations for trial ordered the transmission of the case file to the District Court of Nola (Naples), which assumed jurisdiction *ratione loci*.

8. The case was set down for a first hearing before that court as late as 29 May 1997. Five hearings scheduled to take place between 4 December 1997 and 26 October 1999 were adjourned: two for examination of evidence, one of the court's own motion, one because S.D.C., who had in the meantime reached his majority, had joined the proceedings in his own name before Nola District Court, and one in order to allow the parties to make their submissions. The hearing of submissions was then scheduled for 11 July 2000. However, finding that the defendant had not been informed of a change in the judge in charge of preparations for trial, the new judge adjourned the case until 18 January 2001. The hearing of submissions finally took place on 31 May 2001 and judgment was reserved.

9. In a judgment of 8 October 2001, the text of which was deposited in the court's registry on 10 October 2001, Nola District Court allowed the claims of the applicants and their son.

B. The “Pinto” proceedings

10. On 27 September 2001 the applicants 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 excessive length of the above-described proceedings. The applicants requested the court to conclude that there had been a violation of Article 6 § 1 of the Convention and to order the Italian Government to pay compensation for the pecuniary and non-pecuniary damage that they claimed to have sustained. Each applicant sought, *inter alia*, at least 2,582.28 euros (EUR) for pecuniary damage and EUR 8,392.42 for non-pecuniary damage.

11. In a decision of 28 January 2002, the text of which was deposited in the court's registry on 20 March 2002, the Court of Appeal found that the length of the proceedings had been unreasonable. Dismissing their claim in respect of pecuniary damage on the ground that the applicants had not

adduced any evidence in that connection, it awarded each applicant the sum of EUR 1,032.92, determined on an equitable basis, in respect of non-pecuniary damage and EUR 620 for costs and expenses. This decision was served on the authorities on 12 July 2002 and became final on 26 September 2002.

12. The applicants did not appeal to the Court of Cassation, taking the view that such a remedy was available only in respect of points of law. On 11 April 2003 they brought their case before the Court.

13. In the meantime, the applicants had addressed a letter on 16 July 2002 to the Ministry of Justice, seeking payment of the sum awarded by the Rome Court of Appeal.

14. On 25 February 2003 the applicants served formal notice on the Ministry of Justice to pay the sum in question, then applied for a garnishee order (*pignoramento presso terzi*).

15. The sum awarded by the Court of Appeal was paid on 17 November 2005.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant domestic law and practice are to be found in the *Cocchiarella v. Italy* judgment ([GC], no. 64886/01, §§ 23-31, ECHR 2006-V).

THE LAW

I. PRELIMINARY OBJECTIONS

A. Failure to exhaust domestic remedies

17. The Government raised a preliminary objection of failure to exhaust domestic remedies, divided into two parts.

Firstly, they argued that the applicants had failed to appeal to the Court of Cassation against the decision of the Rome Court of Appeal, whereas such an appeal, in their opinion, was to be regarded as one of the remedies to be exhausted since the Court of Cassation's departure from precedent for this purpose on 26 January 2004.

18. The applicants requested the Court to dismiss this objection and explained that the departure from precedent in question, as a result of which a complaint about insufficiency of “Pinto” compensation could now be

examined as such by the Court of Cassation, had not occurred until after the decision of the Court of Appeal in their case had become final.

19. The Court observes that it previously dismissed this objection in its judgments of 29 March 2006 (see, for example, *Cocchiarella*, cited above, §§ 38-45). It moreover reiterates its finding that it is reasonable to assume that the Court of Cassation's departure from precedent, in particular in judgment no. 1340, must have been public knowledge after 26 July 2004. It has therefore held that, from this date onwards, applicants should be required to avail themselves of such a 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).

20. In the instant case the Court notes that the time-limit for appealing to the Court of Cassation had expired by 26 July 2004 and finds that, in these circumstances, it cannot be objected that the applicants failed to use this remedy.

21. As to the second part of the objection, concerning the delay in the enforcement of the decision of the Rome Court of Appeal, the Government contended that the applicants had omitted to initiate enforcement proceedings against the State in order to recover the sum of EUR 1 032.92 awarded by the Court of Appeal.

22. The applicants opposed this contention, arguing that such proceedings had in fact been taken.

23. The Court has previously accepted that authorities may need a certain period of time in which to make payment. However, in respect of a compensatory remedy that has precisely been 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 (see *Cocchiarella*, cited above, § 101). Furthermore, it is inappropriate to require an individual who has taken legal proceedings resulting in a judgment against the State to bring subsequent enforcement proceedings in order to obtain satisfaction. The fact that the sums owed to the applicants were finally paid to them – albeit belatedly and after the institution of enforcement proceedings – cannot cure the national authorities' long-standing failure to comply with the judgment and does not provide appropriate redress for the shortcomings in question (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004, and *Karahalios v. Greece*, no. 62503/00, § 23, 11 December 2003).

24. Consequently, the Court considers that the applicants were also released from the obligation to take enforcement proceedings and that the Government's preliminary objection should be dismissed.

B. Assessment of “victim” status

25. The Government raised no objection as regards “victim” status, the parties having filed their respective memorials and observations on the application before the judgments of March 2006 in which the Grand Chamber addressed this question. The Court must, however, examine this point of its own motion.

26. The Court reiterates 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 ...”. In this connection it recognises that it falls first to the national authorities to redress any alleged violation of the Convention. It follows that the question whether an applicant can claim to be the 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).

However, a decision or measure favourable to an 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, among other authorities, *Eckle v. Germany*, 15 July 1982, §§ 69 et seq., Series A no. 51; *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X).

It is for the Court to verify, *ex post facto*, firstly whether the authorities have acknowledged, at least in substance, the violation of a right protected by the Convention, and secondly whether the redress provided in relation thereto has been appropriate and sufficient (see, among other authorities, *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001; *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003; and *Nardone v. Italy* (dec.), no. 34368/02, 25 November 2004).

27. The first condition, namely the acknowledgement by the domestic authorities of a violation of the Convention, is not in dispute.

As to the second condition, namely whether the applicant has been afforded appropriate and sufficient redress, the Court has already had occasion to indicate that, whilst a remedy must be regarded as “effective” if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred, that conclusion applies only on condition that the compensatory action remains itself an effective, sufficient and accessible remedy in respect of the excessive length of judicial proceedings (*Paulino Tomas v. Portugal* (dec.), no. 58698/00, ECHR 2003-VIII).

28. The Court first notes that the judicial phase of the “Pinto” proceedings lasted from 27 September 2001 to 20 March 2002, that is to say

five months, which remained a reasonable time even though it exceeded the period provided for by law.

29. The Court finds, however, that the Rome Court of Appeal, after observing that the reasonable time for a judgment had been exceeded, did not provide appropriate and sufficient redress for the violation in question as it awarded only EUR 1,032.92 to each applicant in respect of non-pecuniary damage. Referring to the principles established in its case-law (see, among other authorities, *Cocchiarella*, cited above, §§ 69-98), the Court observes that the sum in question represents little more than about 10% of what it generally awards in similar Italian cases.

30. Lastly, the Court notes that the compensation awarded to the applicants was not actually paid to them until 17 November 2005, that is to say forty months after the Court of Appeal's decision was deposited in the registry.

In this connection, the Court reiterates that the right to a court 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, among other authorities, *Hornsby v. Greece*, 19 March 1997, §§ 40 et seq., *Reports* 1997-II, and *Metaxas*, cited above, § 25).

31. In conclusion, the Court considers that, having regard to the insufficiency of the redress provided, the applicants can still claim to be "victims" within the meaning of Article 34 of the Convention.

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

32. The applicants complained, in the first place, about the length of the civil proceedings in question. They contended, secondly, that the amount awarded to them by the Court of Appeal in respect of non-pecuniary damage, after they had submitted their complaint by means of a "Pinto" application, did not afford them sufficient redress for the violation alleged. They relied on Article 6 § 1 of the Convention, the relevant provisions of which read as follows:

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

33. The Government disputed that submission.

A. Admissibility

34. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

B. The merits

35. As regards the first complaint, concerning the length of the proceedings, the Court reiterates what it found in nine judgments against Italy on 29 March 2006 (see, for example, *Cocchiarella*, cited above, § 119), namely that Italy's position in relation to delays in the administration of justice had not changed sufficiently to call into question the assessment it had given in four previous judgments against Italy of 28 July 1999 (see, for example, *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V) to the effect that the accumulation of breaches constituted a practice that was incompatible with the Convention.

36. The Court finds that the period to be taken into account began on 21 April 1993, when the applicants brought proceedings against the defendant in Naples District Court, and ended on 10 October 2001, when the judgment was deposited in the registry of Nola District Court. It thus spanned more than eight years and five months for a single level of jurisdiction.

37. After examining the facts in the light of the information provided by the parties, and taking into account its case-law in such matters, the Court finds that in the present case the length of the proceedings in question was excessive and failed to meet the “reasonable time” requirement.

38. As to the other part of the complaint, concerning the “Pinto” procedure, the Court would simply observe that it has found above that in view of the amount awarded, together with the delay in payment, the redress provided in this case could not be regarded as sufficient.

39. There has accordingly been a violation of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

40. The applicants contended that the “Pinto” procedure could not be regarded as an effective remedy. They relied on Article 13 of the Convention, which provides:

“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.”

41. The Government disputed that submission.

A. Admissibility

42. The Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It moreover considers that no other ground for declaring it inadmissible has been established and therefore declares it admissible.

B. The merits

43. The Court would point out that Article 13 of the Convention guarantees the availability at national level of a remedy in order to enforce the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The competent national authority must therefore be allowed both to deal with the substance of the relevant Convention complaint and to grant appropriate relief in meritorious cases (see *Mifsud c. France* (dec.) [GC], n° 57220/00, § 17, ECHR 2002-VIII; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 186-188, ECHR 2006-V; and *Sürmeli v. Germany* [GC], no. 75529/01, § 98, ECHR 2006-VII). That being said, the right to an effective remedy within the meaning of the Convention is not to be interpreted as a right to a favourable outcome for the person using it (see *Sürmeli*, cited above, § 98).

44. The Court must ascertain whether the procedure available to the applicants under Italian law may be regarded as an effective, sufficient and accessible remedy in respect of the excessive length of judicial proceedings. In this connection, it refers to its previous finding that the remedy introduced in Italy by the Pinto Act, before the courts of appeal, was accessible and that there was no reason to question its effectiveness (see *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX, and *Scordino (no. 1)*, cited above, § 144).

45. In the present case the Rome Court of Appeal certainly had jurisdiction to entertain the applicants' complaint and duly examined it. Moreover, the Pinto Act did not lay down any limits for the fixing of compensation: the amount of the award was left to the courts' discretion. In the Court's view, the mere fact that the compensation awarded was low does not in itself call into question the effectiveness of the "Pinto" remedy (see, *mutatis mutandis*, *Zarb v. Malta*, no. 16631/04, § 51, 4 July 2006).

46. Consequently, the applicants having had an effective remedy in respect of their Convention complaints, there has been no violation of Article 13.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

48. The applicants claimed 8,329.45 euros (EUR) each in respect of non-pecuniary damage.

49. The Government left the matter to the Court's discretion.

50. As regards non-pecuniary damage, the Court finds that if no domestic remedies had been available it could have awarded each applicant the sum of EUR 10,000. The fact that the Rome Court of Appeal awarded the applicants only about 10% of that sum has led, in the Court's view, to a manifestly unreasonable result. Consequently, having regard to the characteristics of the “Pinto” remedy and to the fact that the Court has found a violation notwithstanding the use of that remedy, the Court, taking into account the solution adopted in the *Cocchiarella* judgment (cited above, §§ 139-142 and 146) and ruling on an equitable basis, awards each applicant the sum of EUR 3,600 together with the sum of EUR 3,800 to compensate for the additional frustration that must have been caused by the delay in payment – which did not take place until 7 November 2005 – of the EUR 1,032.92 awarded by the Rome Court of Appeal.

B. Costs and expenses

51. The applicants sought the reimbursement of EUR 7,653.08, consisting of EUR 6,171.88 for the costs and expenses they had incurred in the proceedings before the Court and EUR 2,101.20 for costs and expenses incurred in the “Pinto” proceedings, less the EUR 620 already awarded by the Rome Court of Appeal in respect of the latter.

52. The Government left the matter to the Court's discretion.

53. The Court reiterates that, according to its case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, and were reasonable as to quantum. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see, for example, *Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002, and *Sahin v. Germany* [GC], no. 30943/96, § 105, ECHR 2003-VIII).

54. As regards the costs and expenses incurred in the proceedings before the Rome Court of Appeal, the Court finds that, taking into account the

length and the degree of complexity of the “Pinto” proceedings, the sum awarded to the applicants may be regarded as reasonable. It thus rejects the remainder of the claim. However, it considers that the applicants' costs in respect of the Strasbourg proceedings should be reimbursed. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant the sum of EUR 1,000 euros under this head.

C. Default interest

55. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been no violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the following sums to each applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention:
 - (i) EUR 7,400 (seven thousand four hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on those 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;
5. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 5 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President