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

SECOND SECTION

CASE OF PROVIDE S.r.l. v. ITALY

(Application no. 62155/00)

JUDGMENT

STRASBOURG

5 July 2007

In the case of Provide S.r.l. v. Italy,

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

Françoise Tulkens, *President*,
Ireneu Cabral Barreto,
Rıza Türmen,
Mindia Ugrekhelidze,
Antonella Mularoni,
Danutė Jočienė, *judges*,
Luigi Ferrari Bravo, ad hoc *judge*,
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 14 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 62155/00) 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 a company governed by Italian law, Provide S.r.l. ("the applicant company"), on 17 April 1998.

2. The applicant company was represented by Mr R. Vico and Mr F. Ugetti, of the Bergamo Bar.

The Italian Government ("the Government") were represented successively by their Agents, Mr U. Leanza and Mr I.M. Braguglia, their co-Agents, Mr V. Esposito and Mr F. Crisafulli, and their deputy co-Agent, Mr N. Lettieri.

3. Vladimiro Zagrebelsky, the judge elected in respect of Italy, withdrew from sitting in the case (Article 28). The Government accordingly appointed Luigi Ferrari Bravo to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

4. On 5 December 2000 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a company governed by Italian law with its registered office in Brembate di Sopra (Bergamo).

A. The main proceedings

6. On 10 March 1992 the applicant company brought proceedings against M.R. and the I. company in the Alemmo San Salvatore (Bergamo) Magistrate's Court, seeking damages for the harm sustained in a road traffic accident, which the applicant company assessed at 1,495,090 Italian liras ((ITL) – 772.14 euros (EUR)).

7. Preparation of the case for hearing began on 28 April 1992. On 29 September 1992 the applicant company requested an adjournment and on 19 January 1993 it filed pleadings. Of the eight hearings scheduled between 15 June 1993 and 4 October 1995, six involved the examination of witnesses and the parties, one was adjourned at the applicant company's request and the last was adjourned of the court's own motion. On 24 January 1996 the defendants requested an expert inquiry and the Magistrate's Court reserved its decision. By an order made in camera on the same date the court rejected the request. On 20 March and 6 November 1996 the parties made their submissions. On 5 March 1997 judgment was reserved.

8. By judgment of 30 April 1998, the text of which was deposited with the registry on 29 May 1998, the Magistrate's Court upheld the applicant company's claim.

B. The “Pinto” proceedings

9. On 6 September 2001 the applicant company brought an action in the Venice Court of Appeal under Law no. 89 of 24 March 2001, known as the “Pinto Act”, complaining that the length of the proceedings described above had been excessive and seeking just satisfaction for the non-pecuniary damage sustained.

10. By decision of 29 November 2001, the text of which was deposited with the registry on 27 December 2001, the Court of Appeal found that a reasonable time had been exceeded but dismissed the claim for compensation since the applicant company had failed to prove that it had sustained any damage.

In respect of pecuniary damage, the Court of Appeal observed that the applicant company had not claimed to have sustained any such harm and that, accordingly, no sum could be awarded under that head.

As to non-pecuniary damage, the Court of Appeal asserted that, although legal entities could sustain damage of that nature as a result of unreasonably lengthy proceedings, such damage could exist only where certain types of loss had been incurred and, in order to be quantified, required specific proof which had not been supplied in this case.

The Venice Court of Appeal ordered the applicant company to pay the State ITL 2,450,000 (EUR 1,265.31) for the costs of the proceedings.

11. The applicant company appealed on points of law, contending that once it had been found that a reasonable time had been exceeded, legal entities were not required to adduce proof of damage which clearly gave rise in itself (*in re ipsa*) to loss.

12. By judgment of 4 February 2003, the text of which was deposited with the registry on 15 April 2003, the Court of Cassation dismissed the appeal and ordered that the costs be shared between the parties.

According to the Court of Cassation, the Pinto Act did not recognise any damage arising *in re ipsa* but required that proof be provided in accordance with section 2 of the Act. Such an approach, moreover, was consistent with the Court's case-law under Article 41 of the Convention.

13. By letter of 30 January 2003 the applicant company informed the Court of the outcome of the domestic proceedings and requested it to resume the examination of its application.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The relevant domestic law and practice are set out in *Cocchiarella v. Italy* ([GC], no. 64886/01, §§ 23-31, ECHR 2006-V).

THE LAW

I. PRELIMINARY OBJECTIONS

A. Non-exhaustion of domestic remedies

15. After the entry into force of the Pinto Act, the Government raised an objection of failure to exhaust domestic remedies.

16. The applicant company requested the Court to dismiss that objection. Relying on the decision in *Scordino v. Italy* ((dec.), no. 36813/97, ECHR

2003-IV), it submitted that although it had brought proceedings before the Court of Cassation it had not in fact been required to do so, since the European Court had considered at the time that an appeal on points of law was not a remedy that had to be used.

17. The Court observes that it has already held in many decisions on admissibility (see, among other authorities, *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX, and *Giacometti and Others v. Italy* (dec.), no. 34939/97, ECHR 2001-XII) that the remedy introduced by the Pinto Act is a procedure which applicants must pursue before the Court rules on the admissibility of the application, irrespective of the date on which the application was made to the Court. The only permitted exception to the rule on using the Pinto remedy – before the Court of Cassation, sitting as a full court, departed from that position on 26 January 2004 – concerned an appeal on points of law against a decision of the Court of Appeal where the applicants, after securing recognition that the length of the proceedings had been excessive, complained of the amount awarded by way of just satisfaction (see *Cocchiarella*, cited above, § 42).

18. The Court further observes that judgment no. 18239/04, delivered by the Court of Cassation and deposited with the registry on 10 September 2004, concerning the right of legal entities to compensation following the departure from precedent on 26 January 2004, adopted the position taken in *Comingersoll v. Portugal* ([GC], no. 35382/97, ECHR 2000-IV) in finding that there was no domestic legal barrier to awarding just satisfaction to "juristic" persons according to the criteria of the Strasbourg Court (see *Cocchiarella*, cited above, § 30).

The Court takes note of that departure from precedent and considers that from 10 September 2004 an appeal on points of law for legal entities had once again acquired a sufficient degree of legal certainty, not only in theory but also in practice, to enable and oblige an applicant to use it for the purposes of Article 35 § 1 of the Convention (see *Broca and Texier-Micault v. France*, nos. 27928/02 and 31694/02, § 19, 21 October 2003).

However, it would be unfair to treat a remedy newly incorporated in the legal system of a Contracting State as constituting a bar to applicants to the Court before the persons concerned had effective knowledge of it (ibid., § 20).

It is clear that for certain applicant companies the deadline for appealing on points of law may have expired shortly after the relevant judgment of the Court of Cassation was deposited with the registry. It is therefore appropriate to set a deadline after the date on which that judgment was deposited, while also taking into consideration the time necessary to become aware of the departure from precedent, to find a lawyer with the right of audience before the Court of Cassation and to prepare the appeal.

The Court deems it reasonable to consider that the judgment in question must have been public knowledge from 10 March 2005. It therefore

concludes that from that date onwards, applicant companies should be required to make use of that remedy for the purposes of Article 35 § 1 of the Convention (see, *mutatis mutandis*, *Di Sante v. Italy* (dec.), no. 56079/00, 24 June 2004).

19. In the present case, the Court observes that the applicant company appealed to the Venice Court of Appeal and then to the Court of Cassation, which dismissed its appeal in a judgment of 4 February 2003, the text of which was deposited with the registry on 15 April 2003. Accordingly, the Pinto proceedings ended well before 10 March 2005, and in any event the applicant company had appealed to the Court of Cassation.

The Government's objection must therefore be dismissed.

B. "Victim" status

20. Although the Government raised no objection on this point, since the parties filed their respective memorials and observations on the application before the judgments of March 2006 in which the Grand Chamber addressed the question of "victim" status (see the references cited in paragraph 29 below), the Court must examine it of its own motion.

21. 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 ...". It falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether or not the 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).

A decision or measure favourable to the applicant is not in principle sufficient to deprive him of his "victim" status 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*, 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 ascertain *ex post facto*, first, whether the authorities have acknowledged, at least in substance, that there has been a violation of a right protected by the Convention and, second, whether the redress may be considered 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).

22. The first condition, namely the acknowledgment of a violation by the national authorities, is not in dispute.

As to the second condition, namely appropriate and sufficient redress, the Court has held that even if a remedy is "effective" in that 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 an application for compensation remains itself an effective, adequate and accessible remedy in respect of the excessive length of judicial proceedings (see *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

23. The Court notes, first of all, that the Pinto proceedings lasted from 6 September 2001 to 15 April 2003, a period of nineteen months, which is still reasonable in so far as two courts were required to consider the matter.

24. The Court further considers that in finding that a reasonable time had been exceeded and dismissing the claim for compensation for non-pecuniary damage, the Venice Court of Appeal did not afford appropriate and sufficient redress for the breach it had found.

25. In conclusion, the Court considers that the redress proved insufficient and that the applicant company can still claim to be a "victim" within the meaning of Article 34 of the Convention.

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

26. The applicant company alleged that the length of the civil proceedings had failed to observe the "reasonable time" principle set forth in 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 ..."

27. The Government contested that argument.

A. Admissibility

28. The Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

29. The Court reiterates that it found in nine judgments against Italy of 29 March 2006 (see, for example, *Cocchiarella*, cited above, § 119) that Italy's position with respect to delays in the administration of justice had not changed sufficiently to call into question the Court's conclusion in four judgments against Italy of 28 July 1999 (see, for example, *Bottazzi v. Italy*

[GC], no. 34884/97, § 22, ECHR 1999-V) that such an accumulation of breaches constituted a practice that was incompatible with the Convention.

30. The Court notes that the period to be taken into consideration began on 10 March 1992, when the defendants were summoned to appear before the Alemmo San Salvatore Magistrate's Court, and ended on 29 May 1998, when that court's judgment was deposited with the registry. The proceedings therefore lasted slightly more than six years and two months at one level of jurisdiction.

31. After examining the facts in the light of the information provided by the parties, 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.

32. There has therefore been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

33. The applicant company argued that the Pinto procedure did not constitute an effective remedy. It 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."

34. The Government contested that argument.

A. Admissibility

35. The Court finds that this complaint is not manifestly unfounded within the meaning of Article 35 § 3 of the Convention. It further notes that no other reason ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

36. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief in meritorious cases (see *Mifsud*, cited above, § 17; *Scordino v. Italy (no. 1*) [GC], no. 36813/97, §§ 178-207, ECHR 2006-V; and *Sürmeli v. Germany* [GC], no. 75529/01, § 99, ECHR 2006-VII). The Court further

reiterates that 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).

37. The Court must ascertain whether the procedure available to the applicant company 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, is accessible and that there is no reason to question its effectiveness (see *Brusco*, cited above, and *Scordino (no. 1)*, cited above, § 144).

38. In the present case, the Venice Court of Appeal had jurisdiction to entertain the applicant company's complaint and duly examined it. Moreover, the Pinto Act does not lay down any limits for the determination of compensation, and the amount of the award is left to the national court's discretion. In the Court's view, the mere fact that the amount of compensation awarded in the present case was not large is not sufficient in itself to call into question the effectiveness of the Pinto remedy (see, *mutatis mutandis*, *Zarb v. Malta*, no. 16631/04, § 51, 4 July 2006).

39. Consequently, as the applicant company had an effective remedy in respect of the violations of the Convention alleged by it, there has been no violation of Article 13 of the Convention.

...

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant company assessed the non-pecuniary damage sustained at 50 million Italian liras (25,822.84 euros (EUR)).

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

46. As regards non-pecuniary damage, the Court considers that if no domestic remedies had been available it could have awarded the sum of EUR 4,000, taking into account what was at stake in the dispute and the delays attributable to the applicant company. The fact that the domestic courts made no award to the applicant company has led, in the Court's view, to a manifestly unreasonable outcome. Consequently, regard being had to the characteristics of the Pinto remedy and to the fact that it has found a

violation notwithstanding this domestic remedy, the Court, taking into account the solution adopted in *Cocchiarella* (cited above, §§ 139-142 and 146) and making its assessment on an equitable basis, awards the applicant company EUR 1,800.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible as regards the complaints under Article 6 § 1 and Article 13 of the Convention ...;

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 applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 1,800 (one thousand eight hundred euros) in respect of non-pecuniary damage;
   ...

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

Sally Dollé Registrar	Françoise Tulkens President