



First use in criminal matters of the “significant disadvantage” admissibility criterion

In today’s Chamber judgment in the case of [Gagliano Giorgi v. Italy](#) (application no. 23563/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial within a reasonable time) of the European Convention on Human Rights.

The case concerned an Italian national who, having been convicted after criminal proceedings lasting 10 years and seven months, sought redress for the excessive length of the proceedings using the “Pinto” procedure – a remedy introduced in Italy for such complaints. As the redress proceedings themselves lasted for over 5 years, the applicant complained that there had been a breach of the “reasonable time” principle, in respect not only of the main criminal proceedings but also of the “Pinto” proceedings, both having been excessive in length.

Principal facts

The applicant, Mario Gagliano Giorgi, is an Italian national who was born in 1949 and lives in Milan (Italy). He was an inspector with the Immigration Bureau at the Milan Police Authority.

On 5 September 1988 he was accused of having obliged or incited a number of foreign nationals seeking residence permits to pay him sums of money in order to obtain their papers from the Immigration Bureau and of having altered the record of statements by a foreign national who had denounced this practice.

On 22 June 1990 he was convicted of extortion by the District Court of Milan and sentenced to four years and six months’ imprisonment. On 26 May 1990 Mr Gagliano Giorgi appealed against that judgment before the Milan Court of Appeal, which, in a judgment of 29 November 1993, confirmed his responsibility for only some of the extortion incidents in the indictment and thus reduced his prison sentence to three years and eight months for that offence and also for forgery.

On 24 December 1993 Mr Gagliano Giorgi lodged an appeal with the Court of Cassation. In a judgment of 29 September 1994, the Court of Cassation quashed the judgment of the Court of Appeal on the ground that the summons to appear before the latter had been unlawfully served. In a judgment of 1 March 1996, the Court of Appeal, after reclassifying the charge as “bribery”, declared the prosecution of that offence time-barred but convicted Mr Gagliano Giorgi of forgery, sentencing him to one year’s imprisonment and debarring him from public office for one year as an accessory penalty.

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Mr Gagliano Giorgi again appealed on points of law to the Court of Cassation which, in a judgment of 7 October 1997, quashed the judgment of the Court of Appeal on the ground that the summons to appear had, once again, been unlawfully served.

In a judgment of 11 June 1998 the Court of Appeal declared that the bribery charge was time-barred and sentenced Mr Gagliano Giorgi to one year's imprisonment for forgery, debarring him from public office for one year as an accessory penalty. On 2 October 1998 he lodged an appeal on points of law, which was dismissed by a judgment of 14 April 1999.

On 16 October 2001, based on the "Pinto Act" of 24 March 2001, which introduced a special procedure by which to seek redress for failure by the Italian courts to give judgment within a reasonable time, Mr Gagliano Giorgi filed a claim with the Brescia Court of Appeal for 60,000,000 Italian lira – 30,987 euros (EUR) – to cover the pecuniary and non-pecuniary damage that he claimed to have sustained on account of the length of the main proceedings.

In a decision of 21 February 2002 the Court of Appeal found a violation of Article 6 § 1 of the Convention only in respect of the period from the judgment of the Milan District Court (22 June 1990) to the first judgment on appeal (29 November 1993), and did not award any compensation on the ground that Mr Gagliano Giorgi had not shown that he had sustained any pecuniary or non-pecuniary damage and that, in any event, having been convicted at the end of the main proceedings, he could not have sustained any non-pecuniary damage related to their duration.

The Court of Cassation, hearing an appeal by the applicant, quashed the decision in a judgment of 24 October 2003, finding that the unfavourable outcome of the proceedings did not, in itself, preclude the existence of non-pecuniary damage related to their duration and indicating, moreover, that an allegation of damage caused by the length of proceedings had to be substantiated. It referred the case back to the Brescia Court of Appeal, which, in a judgment of 21 July 2004, dismissed the appeal on the ground that Mr Gagliano Giorgi had not substantiated his claim of non-pecuniary damage, as he should have done, and that it had been in his interest to prolong the criminal proceedings so that the offences with which he was charged would become time-barred. His further appeal to the Court of Cassation was dismissed on 6 December 2006.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 of the Convention, Mr Gagliano Giorgi complained, firstly, of the excessive length of the main proceedings, which led to his criminal conviction, secondly, of his failure to obtain redress through the Pinto proceedings, and thirdly, of the excessive length of the Pinto proceedings themselves.

Relying in particular on Article 13 (right to an effective remedy), he argued in particular that on account of excessively strict compensation criteria and of an excessive duration, the Pinto procedure had not constituted an effective remedy.

The application was lodged with the European Court of Human Rights on 31 May 2007.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
 Danutė **Jočienė** (Lithuania),
 Dragoljub **Popović** (Serbia),
 Işıl **Karakas** (Turkey),
 Guido **Raimondi** (Italy),
 Paulo **Pinto de Albuquerque** (Portugal),

Helen **Keller** (Switzerland), *Judges*,

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

Decision of the Court

Article 6 § 1

The Court reiterated that the purpose of the new “significant disadvantage” admissibility criterion introduced by Protocol No. 14 was to enable more rapid disposal of unmeritorious cases and thus to allow it to concentrate on its central mission of providing legal protection of the rights guaranteed by the Convention.

The Court found that because of the duration of the proceedings in question, the Court of Appeal, on 11 June 1998, had declared the charge of bribery to be time-barred, and that this had led to a particularly significant reduction in Mr Gagliano Giorgi’s sentence because it was the offence that carried the harshest punishment. In those circumstances, the Court considered that the reduction in sentence had offset or reduced the damage that would otherwise have been caused by the excessive duration of the proceedings.

In addition, the Court found that the question concerning the duration of the criminal proceedings had been examined on two occasions by the Court of Appeal (judgments of 21 February 2002 and 21 July 2004) and by the Court of Cassation (judgment of 24 October 2003) under the “Pinto Act”. Mr Gagliano Giorgi had made submissions to the Court of Cassation based on the Court of Appeal’s refusal to award him monetary compensation. The case had thus been duly considered by a domestic tribunal.

Accordingly, finding that Mr Gagliano Giorgi had not suffered a “significant disadvantage” in respect of his entitlement to a hearing within a reasonable time and that the case had been duly considered by a domestic tribunal, the Court declared this complaint inadmissible.

The Court pointed out that the total duration of the “Pinto” proceedings (Court of Appeal, Court of Cassation and enforcement phase), should not, in principle, save in exceptional circumstances, exceed two years and six months. Since the procedure constituted a compensatory remedy by which to obtain redress for the excessive length of proceedings, States had to show particular diligence in such cases so that a breach could be found and redress granted as quickly as possible.

After subtracting the delays attributable to the applicant himself, the “Pinto” proceedings had lasted four years and two months for two levels of jurisdiction, without an enforcement phase (Mr Gagliano Giorgi not having obtained any compensation), the Court held that the duration had considerably exceeded a “reasonable time”. There had thus been a violation of Article 6 § 1.

Article 13

The Court considered that neither the insufficiency of the “Pinto” compensation nor the fact that the “Pinto Act” did not provide the applicant with redress for the entire length of the proceedings but only took into account damage that was related to the period exceeding the “reasonable time”, could not call into question, for the time being, the effectiveness of this remedy. Whilst accepting that excessive delays in an action for compensation might render the remedy inadequate, the Court took the view that the length of the proceedings leading to the violation of Article 6 § 1 of the Convention was not sufficiently significant for the effectiveness of the “Pinto” remedy to be called into question.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Italy was to pay the applicant EUR 500 euros in respect of non-pecuniary damage.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.