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

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General measures required to remedy malfunctioning of Pinto applications

In today's Chamber judgment in the case of Gaglione and Others v. Italy (application no. 45867/07), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 6 § 1 (fairness of proceedings – enforcement of judicial decisions within a reasonable time)

A violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights

The case concerned the delay by the Italian authorities in paying compensation in 475 "Pinto" applications (applications lodged to complain of the length of civil proceedings) – a delay of at least 19 months in 65% of the applications.

The Court observed a widespread problem relating to the enforcement of Pinto decisions in Italy (at 7 December 2010, more than 3,900 applications concerning, among other things, delays in paying compensation under the Pinto Act were pending before the Court).

It disagreed with the assertion that the applicants had not suffered a significant disadvantage and dismissed for the first time a request for application of the new admissibility criterion introduced by Protocol No. 14 (no significant disadvantage).

Principal facts

The application concerns 475 cases in which the applicants complained of the delay by the authorities in enforcing judicial decisions dating from 2003 and 2007. They had applied to the competent courts under the "Pinto" Act in order to complain of the length of the proceedings to which they were parties.

Following enforcement proceedings brought by the applicants, the courts found that a reasonable time had been exceeded and awarded them compensation for the loss sustained, ranging from 200 to 13,749.99 euros. Those sums were paid to certain applicants, between 2 May 2007 and 10 July 2008, but others had still not received payment by the date on which the latest information was provided to the Court. The delay by the Italian authorities in enforcing the Pinto decisions in their favour ranged from 9 to 49 months and was 19 months or more in 65% of the applications.

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

Complaints, procedure and composition of the Court

Relying in particular on Article 6 § 1 and Article 1 of Protocol No. 1, the applicants complained of the delay by the Italian authorities in enforcing "Pinto decisions".

The applications were lodged with the European Court of Human Rights on various dates between 8 October 2007 and 9 July 2008.

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

Françoise **Tulkens** (Belgium), *President*,
Ireneu **Cabral Barreto** (Portugal),
Dragoljub **Popović** (Serbia),
Nona **Tsotsoria** (Georgia),
Işıl **Karakaş** (Turkey),
Kristina **Pardalos** (San Marino),
Guido **Raimondi** (Italy)*, Judges*,

and also Stanley **Naismith**, *Section Registrar.*

Decision of the Court

Article 6 § 1

The Court did not consider it necessary to declare the applications inadmissible for lack of a significant disadvantage, within the meaning of the new criterion provided for in Article 35 § 3 (b) of the Convention as amended by Protocol No. 14, as argued by the Italian Government. It could not be asserted that the applicants had not sufffered a significant disadvantage regarding the amounts due to them under the "Pinto" proceedings – ranging from 200 to 13,749.99 euros – and the delay in question of at least 19 months in most cases.

The Government submitted that default interest had been awarded to the applicants and that they could institute fresh "Pinto" proceedings. The Court had already rejected these arguments on several occasions. It observed that requiring the applicants to bring fresh Pinto proceedings would be tantamount to locking them into a vicious circle in which the malfunctioning of one remedy would oblige them to have recourse to a second one.

Accordingly, the Court dismissed the objection on grounds of inadmissibility raised by the Italian Government[2].

While the Court recognised that the authorities needed time to make payment, it reiterated that 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 became enforceable[3]. In the applicants' case, in view of the delay in enforcing the Pinto decisions, that period had been considerably exceeded.

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[2] As the new admissibility criterion under Article 35 of the Convention applied only where all three conditions of application were satisfied, the Court did not find it necessary to consider the question whether respect for human rights as defined in the Convention and its Protocols required an examination of the applications on the merits and whether they had been duly considered by a domestic tribunal.

[3] Cocchiarella v. Italy, 29.03.2006

Payment by the authorities of the costs and expenses incurred by the applicants in the enforcement proceedings, such as payment of default interest, could not be regarded as compensation for the non-pecuniary damage sustained.

Accordingly, the Court considered that the applicants still had "victim" status and concluded that there had been a violation of Article 6 § 1.

Article 1 of Protocol No. 1

In the light of its case-law, the Court found that the delay in question amounted to an interference with the applicants' right to the peaceful enjoyment of their possessions[4] and that the period beyond which a violation of Article 1 of Protocol No. 1 would be deemed to have occurred should be fixed at six months from when the decision became enforceable[5]; that had been considerably exceeded in the applicants' case. Consequently, there had been a violation of Article 1 of Protocol No.1.

Article 46

Having regard to the Court's conclusions in the applicants' case and to the number of similar cases that had either been processed or were pending, the Court underlined the existence of a widespread problem, namely, the difficulty for the Italian authorities to guarantee in a substantial number of cases effective payment of compensation within a reasonable time. Thus, at 7 December 2010 more than 3,900 applications relating to that type of complaint were pending before the Court. The number had increased from 613 lodged in 2007 to approximately 1,340 lodged between 1 June and 7 December 2010. There had been an exponential increase in the cost of compensation payable by the Italian Government in Pinto proceedings: at the end of December 2008, 36.5 million euros remained payable in addition to the 81 million already paid.

The Court saw in that shortcoming on the part of the State not only an aggravating factor with regard to its responsibility under the Convention, but also a threat to the future of the system put in place by the Convention.

In his letter of 2 April 2009 the Registrar of the Court informed the Committee of Ministers[6] that the applicants' case had been communicated to the Italian authorities, in a letter recommending urgent intervention on Italy's part, referring in particular to a resolution of the Committee of Ministers of the Council of Europe[7] which contained a series of recommendations and, noting a substantial backlog in the civil and criminal fields (5.5 million pending civil cases and 3.2 million pending criminal cases), strongly encouraged the authorities to amend the Pinto Act.

Although in theory it was not for the Court to determine the appropriate measures of redress for a State to take in accordance with its obligations under Article 46, the Court observed that general measures at national level were undoubtedly required in the execution of today's judgment, including earmarking funds in the budget for the enforcement of Pinto decisions.

Being aware of the difficulty of the task, the Court, while it did not support all the measures proposed in the reform currently being examined by the Italian Chamber of Deputies, considered that it was an ideal framework for taking account of the Court's indications under Article 46 and of the recommendations of the Committee of Ministers.

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[4] Burdov v. Russia, 15.01.2009

[5] Simaldone v. Italy, 31.03.2009

[6] The executive arm of the Council of Europe

[7] Interim Resolution CM/ResDH(2009)42 of 19 March 2009

Article 41

With regard to just satisfaction, the Court considered it necessary to adopt a uniform approach having regard to the fact that the applications involved a number of victims who had been placed in a similar situation. Consequently, it held that Italy should pay each applicant 200 euros (EUR) for non-pecuniary damage and EUR 10,000 to the applicants jointly for costs and expenses.

Judges Cabral-Barreto and Popovic expressed a partly dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

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