

APPLICATION N° 15384/89

G L v/ ITALY

DECISION of 9 May 1994 on the admissibility of the application

Article 6, paragraph 1 of the Convention

- a) *This provision does not require States to establish courts of appeal or cassation. If, however, such courts are created, the requirements of Article 6 must be respected*
- b) *This provision does not prevent Contracting States from regulating access to appeal jurisdictions in order to ensure the proper administration of justice in particular through the imposition of fines for abuse of process*

The high level of a fine for abuse of process may raise an issue of access to court

- c) *This provision places the tribunal under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties*
- d) *The absence of reasons in a judicial decision may raise the question of the right to a fair hearing. In the present case, the absence from a judgment of the Court of Cassation (Italy) imposing a fine for abuse of process in criminal proceedings of a specific point dealing with the abusive nature of the appeal is not unfair, in view of the lack of grounds for the applicant's appeal and the reasons for the judgment*

Article 7, paragraph 1 of the Convention

- a) *A fine for abuse of process does not increase the principal penalty since it penalises the vexatious exercise of the right of appeal and not the offence which is the object of the proceedings*
 - b) *This provision is not concerned with the prohibition of reformatio in pejus*
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THE FACTS

The applicant is an Italian national born in 1944 in Sabbio Chesa (Brescia), where he currently resides

In the proceedings before the Commission he is represented by Mr Carattoni, a lawyer practising in Salò (Brescia)

The facts, as submitted by the parties, may be summarised as follows

On 23 April 1982, the applicant was sentenced to six months' imprisonment by the Brescia court for forging a receipt for the payment of motor vehicle road tax and the tax disc certifying payment

On 23 February 1988, the judgment was confirmed by a decision of the Brescia Court of Appeal. The applicant then appealed to the Court of Cassation

In the grounds cited in support of his appeal, the applicant maintained, in particular, that the Brescia Court of Appeal's reasons for its decision were inadequate, since it had ignored certain essential facts which were evidence of his good faith (for example, the fact that he had no interest in forging the receipt for the payment of road tax since, as his car was in a garage for repairs and could not therefore be deemed to be "on the road", the tax did not have to be paid and it would have been pointless to forge the receipt, the applicant also claimed to have given further evidence of his good faith by spontaneously approaching police officers whom he had noticed carrying out checks in the neighbourhood of the garage to ask them to confirm that the amount shown on the receipt as payment of the road tax was the correct sum)

The Court of Cassation dismissed the applicant's appeal on 1 December 1988. In the reasons for its decision, it stated in particular that the applicant's submissions were manifestly ill founded since the Brescia Court of Appeal had furnished ample reasons for its judgment (it found, *inter alia*, that the applicant's vehicle had to be deemed to be "on the road" even though it was temporarily in a garage for repairs and that the applicant's spontaneous approach to the police officers should be treated as an expedient designed to mislead them)

The Court of Cassation also ordered the applicant to pay a fine of 500,000 Italian lira, pursuant to Article 549 of the former Italian Code of Criminal Procedure

Under this Article, "the decision which declares the appeal inadmissible or which dismisses it shall order the party who lodged the appeal to pay the costs and fees arising from the proceedings. The decision shall also order the party to pay a fine of between 100,000 and 1,000,000 Italian lira

COMPLAINTS

The applicant complains of the fine imposed on him by the Court of Cassation following the dismissal of his appeal. He relies on Articles 6 para. 1 and 7 para. 1 of the Convention.

THE LAW

1. The applicant complains that the fine imposed on him pursuant to Article 549 of the former Italian Code of Criminal Procedure constituted an unwarranted restriction on his right of access to a court, and that this was contrary to Article 6 para. 1 of the Convention.

Article 6 para. 1 of the Convention provides that in the determination of any criminal charge against him, everyone is entitled to a fair hearing by a tribunal.

The Government state that the amount of the disputed fine, whether the 500,000 lira which the applicant was ordered to pay or the maximum sum of 1,000,000 lira specified in the legislation in force at the time, is not so exorbitant as to represent a genuine impediment to the normal exercise of the right of appeal. The Government also maintain that the purpose of such fines is to discourage vexatious litigants to prevent a build up of cases and thus further to safeguard the right to a hearing within a reasonable time, pursuant to Article 6 para. 1 of the Convention. Finally, the Government emphasise the fact that the Court of Cassation dismissed the applicant's appeal and ordered him to pay the disputed fine after a thorough examination of his grounds of appeal.

The applicant maintains that the disputed fine is an atypical penalty imposed with no reasons given, constituting an impediment to the right to appeal on points of law and making the proceedings before the Court of Cassation unfair.

As the Commission noted in its decision on the admissibility of Application No. 10412/83 (Dec. 14.7.87, D.R. 52 p. 128), the Commission and the Court have held on several occasions (see *Eur. Court H.R.*, *Delcourt* judgment of 17 January 1970, Series A no. 11 p. 14, para. 25 and *Monnell and Morris* judgment of 2 March 1987, Series A no. 115, p. 21 para. 54, decision on the admissibility of Application No. 8603/79 and others, *Crociani, Palmiotti, Tanassi and Lefebvre d'Ovidio v. Italy* of 18.12.80, D.R. 22 p. 147) that the Convention does not compel the Contracting States to set up courts of appeal or of cassation. Nevertheless, a State which does

institute such courts is required to ensure that persons amenable to the law shall enjoy before these courts the fundamental guarantees contained in Article 6"

The Commission considers that the imposition of a fine for the purpose of discouraging vexatious litigants, preventing a build-up of cases before the courts and ensuring the proper administration of justice does not, as such, conflict with the right of access to a court guaranteed by Article 6 para 1 of the Convention (see No. 12275/86, Dec. 2.7.91, D.R. 70 p. 47)

In the present case, the Commission notes that the amount of the fine provided for in the legislation in force at the time ranged from a minimum of 100,000 to a maximum of 1,000,000 Italian lira. It is a fact that the disputed provisions did not prevent the applicant from lodging his appeal to the Court of Cassation.

Moreover, the applicant has adduced no specific facts such as to persuade the Commission that the possibility of being ordered to pay the disputed fine was likely to constitute a serious impediment to the introduction of his appeal.

Nevertheless, the wording of the decision does not specifically explain why the Court of Cassation considered the appeal to be vexatious. In the operative part of its judgment, after dismissing the various grounds of appeal, it merely made an order against the applicant pursuant to Article 549 of the former Code of Criminal Procedure.

The Commission recognises that in certain specific circumstances the failure to give reasons for a judgment can raise issues regarding the right to a fair hearing as guaranteed by Article 6 para. 1 of the Convention. In this context, the Commission notes that in its decisions on the admissibility of Applications No. 12275/86 (cited above) and No. 13487/88 (Dec. 2.7.91, unpublished) it considered that the procedures followed in these civil cases, before the French Conseil d'Etat and Court of Cassation respectively, could not be held to have been unfair within the meaning of Article 6 of the Convention, nor could the decisions taken by those courts be considered arbitrary because no specific reference was made to the vexatious nature of the applicants' appeals. The dismissal of the appeals lodged by the applicants as manifestly ill-founded, and the fines imposed on them for abuse of process, followed thorough examinations of the grounds of appeal submitted to the courts in question.

It is true that the circumstances of the present case are different, in that it concerns criminal proceedings and also because it is impossible to deduce from the relevant legislation or the Court of Cassation's decision what factors led the court to impose a fine for abuse of process. The Commission also refers to the European Court's case-law, according to which "the effect of Article 6 para. 1 is, *inter alia*, to place the 'tribunal' under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties." (see Eur. Court H.R., Kraska judgment of 19 April 1993, Series A no. 254-B, p. 49, para. 30). The Commission

observes in this respect that the grounds cited by the applicant in support of his appeal appear to be manifestly ill founded and that the Court of Cassation rejected them after a thorough and amply reasoned examination of the applicant's submissions

The Commission therefore considers that this part of the application is manifestly ill founded and must be rejected pursuant to Article 27 para 2 of the Convention

2 The applicant also complains that the fine imposed on him constitutes an increase in his penalty, contrary to the principle prohibiting *reformatio in pejus*. In support of this complaint he relies on Article 7 para 1 of the Convention

The Government maintain that the provision relied on by the applicant is not applicable in this case, since the disputed fine does not constitute a penalty within the meaning of Article 7 of the Convention, but is a sanction of an essentially procedural nature

According to the applicant, the fine represented an increase in his penalty, imposed on him without the opportunity to contest the decision in an adversarial procedure

The Commission considers that the fine in question did not lead to a heavier penalty, since its sole purpose was to penalise the vexatious exercise of the right to appeal on points of law, not the offence which was the subject of the proceedings before the Court of Cassation

At all events the Commission finds that the provision relied on by the applicant according to which nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed, does not apply in this case, since it is not concerned with the principle prohibiting *reformatio in pejus*

The applicant's complaint must therefore be rejected, pursuant to Article 27 para 2 of the Convention, as incompatible *ratione materiae* with the provisions of the Convention

For these reasons, the Commission, unanimously

DECLARES THE APPLICATION INADMISSIBLE