

APPLICATION N° 26090/94

Gianluca VISCONTI and Gerda GLEBE VISCONTI v/ITALY

DECISION of 27 May 1998 on the admissibility of the application

Article 6, paragraph 1 of the Convention

- a) The purpose of holding judicial proceedings in public is to protect litigants against the administration of justice in secret with no public scrutiny and to give citizens confidence in the courts. By rendering the administration of justice visible, publicity contributes to ensuring that trials are fair, a defining feature of democratic societies.*
- b) The principle that hearings should be held in public does not mean that third parties are entitled to attend hearings which are held in private. On the facts, the second applicant, who is the mother of the first applicant, was not a party to the proceedings and thus cannot complain about the fact that she was not allowed to attend the hearing.*

Article 25 of the Convention *Criminal proceedings in chambers, in which no public hearing was held. Whether or not this could potentially constitute a violation of Article 6, the first applicant who was involved in the proceedings as a civil party claiming damages, cannot claim to be a "victim" since he failed to avail himself of his right to refuse to allow the case to be dealt with under the abridged procedure and to have it dealt with instead in ordinary proceedings in which the principle that hearings should be held in public would apply without restriction.*

THE FACTS

The first applicant is an Italian citizen, born in 1972 and resident in Rivalta (Turin Province). He was represented before the Commission by his mother, Mrs Gerda Glebe Visconti, who is also the second applicant.

The facts of the case as submitted by the applicants may be summarised as follows

a) *Particular circumstances of the case*

On 6 May 1989 during a party at a villa in Rivalta (Turin Province), the first applicant was pushed violently by D V and fell into an almost empty swimming pool incurring very serious injuries

On 5 June 1989 the first applicant's parents laid a complaint against D V with the Turin public prosecutor who made investigations and ordered a medical report on the first applicant

On 6 November 1989, the public prosecutor served D V with notice (*informazioni di garanzia*) of the opening of a preliminary judicial investigation into his conduct on suspicion of his having caused very serious personal injury (*lesioni personali gravissime*) The notice was also served on the first applicant's parents in their capacity as the representatives of their minor child

On 18 November 1991 the public prosecutor applied for D V to be committed for trial

On 5 December 1991 D V was summoned (together with the first applicant, as the victim) to appear before the preliminary investigations judge at Turin District Court on 30 January 1992 for a preliminary hearing

Since this hearing took place in chambers neither the second applicant nor her husband were allowed to be present The first applicant was assisted physically by the policemen who were attending He had himself joined as a party to the proceedings claiming civil damages He also applied for a medical report on himself to be placed on the case file and the judge so ordered

The public prosecutor requested the judge to order a further medical report D V applied for the proceedings to follow the abridged procedure - that is to say, that the case should be resolved at the preliminary hearing (in chambers), on the basis of the evidence already on the case file The public prosecutor did not agree to this application

The preliminary investigations judge ordered a further medical report and adjourned the case to 17 February 1992

On an unspecified date D V renewed his application for the case to be dealt with under the abridged procedure and this time the public prosecutor agreed

In a judgment (*sintenza di giudizio abbreviato*) of 27 November 1992, deposited with the registry on 25 February 1993, Turin District Court convicted D V and sentenced him to two years' imprisonment but with immediate remission. It also ordered him to pay the first applicant interim damages of 150 million lire with the precise amount of the final damages to be determined by the civil courts and to pay the first applicant's legal costs.

On 7 April 1993 D V appealed against this judgment to Turin Court of Appeal, seeking to have the offence of which he had been convicted reclassified which would result in his conviction being extinguished under an amnesty. The first Court of Appeal hearing was set down for 20 November 1997.

In a judgment of 20 November 1997, deposited with the registry on 4 December 1997, Turin Court of Appeal reclassified the charge on which D V had been convicted from intentionally causing personal injury to unintentionally causing personal injury and declared the offence extinguished by effluxion of time.

b) *Relevant domestic law*

Under sections 418ff and 438ff of the Code of Criminal Procedure a criminal case may be tried under the abridged procedure (*giudizio abbreviato*) if the accused so requests and the public prosecutor agrees. In that case the case is dealt with in its entirety at the preliminary hearing (*held in private*) on the basis of the evidence already on the case file in the presence of the accused, defence counsel, the public prosecutor and the victim.

Under section 441(2) of the Code of Criminal Procedure, a victim who joins the proceedings as a civil party claiming damages in the knowledge that the case is to be dealt with under the abridged procedure is deemed to have accepted this. Under section 441(3) if the victim does not agree to the use of the abridged procedure, the civil proceedings concerning his or her civil rights should not be stayed pending the outcome of the criminal proceedings.

COMPLAINTS (Extract)

2 The applicants complain about the fact that the second applicant was not allowed to attend the preliminary hearing of 30 January 1992.

THE LAW (Extract)

2 As regards the fact that the second applicant was not allowed to attend the hearing of 30 January 1992, the Commission observes, first, that the proceedings in question were dealt with under the abridged procedure, and thus in private. There was no public hearing in the case.

The Commission recalls that the public character of judicial proceedings required by Article 6 of the Convention aims to respect litigants against the dangers of justice administered in secret with no public scrutiny, it is also one of the means of inspiring citizens with confidence in the courts, since it renders the administration of justice visible and contributes to ensuring that trials are fair, a defining feature of democratic societies (see, amongst other authorities, Eur Court HR, judgments in the cases of *Axen v the Federal Republic of Germany* of 8 December 1983, Series A no 72 and *Sutter v Switzerland* of 22 February 1984, Series A no 74).

However, in the present case, the Commission observes, as regards the first applicant, that even supposing that the fact that the proceedings took place in private could potentially amount to a violation of Article 6 para 1 of the Convention, the first applicant could, under section 441(3) of the Code of Criminal Procedure, have refused to agree to the abridged procedure being followed and have brought ordinary civil proceedings for damages, in which the principle that hearings should be held in public would have applied without restriction.

Consequently, the Commission considers that the first applicant cannot claim to be "a victim" of the alleged violation. It follows that this part of the complaint must be rejected as manifestly ill founded within the meaning of Article 27 para 2 of the Convention.

Secondly, the Commission observes, as regards the second applicant, that the principle that a trial should be held in public does not mean that third parties are entitled to attend hearings which are held in private. Therefore, it considers that the first applicant's mother, who was not a party to the proceedings, cannot complain about the fact that she was not allowed to attend the preliminary hearing.

It follows that the part of the complaint concerning the second applicant must also be rejected as manifestly ill founded within the meaning of Article 27 para 2 of the Convention.