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

FIRST SECTION

DECISION

Application no. 20507/07
Domenico BERNARDINI and Giuliana GASPARI against Italy
and 16 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 13 February 2025 as a Committee composed of:

Erik Wennerström*, President*,
Raffaele Sabato,
Artūrs Kučs*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the applications against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the applicants listed in the appended table ("the applicants"), on the various dates indicated therein;

the decision to give notice of the complaints concerning Article 6 § 1 and Article 13 of the Convention to the Italian Government ("the Government") represented by their Agent, Mr L. D'Ascia, and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present applications concern the rights of the injured party in criminal proceedings.

2. On various dates the applicants lodged criminal complaints with the domestic authorities in respect of specific offences. The domestic authorities discontinued the proceedings on various grounds at the stage of the preliminary investigations before the applicants had the opportunity to join them as civil parties. The details of the proceedings in each application are indicated in the appended table.

3. Some of the applicants brought proceedings under Law no. 89 of 24 March 2001 ("Pinto proceedings") to obtain compensation for the excessive length of the criminal proceedings (see appended table). They requested that the authorities consider the length of the proceedings from the date of the filing of the criminal complaints, but their requests were rejected. In particular, the domestic courts found that the applicants were not entitled to claim compensation as they had not joined the proceedings as civil parties.

4. All the applicants except for those in applications nos. 56539/19 and 29645/20 complained under Article 6 § 1 of the Convention of the excessive length of the domestic proceedings and, in particular, of the preliminary investigations.

5. As to applications nos. 20507/07, 56687/10, 7708/14, 19778/16, 56539/19, 29645/20, 44400/20, 38296/21, 10449/22, 17052/22 and 17407/22 the applicants also complained under Article 6 § 1 of the Convention that they did not have access to a court to determine their civil claims due to the inaction of the authorities during the investigations, which had led to the discontinuance of the criminal proceedings in which they were injured parties.

6. With respect to applications nos. 56539/19 and 29645/20 the applicants further complained under Article 1 of Protocol No. 1 to the Convention of the failure to obtain compensation for the discontinuance of the criminal proceedings.

7. The applicants in applications nos. 17151/10, 42661/10, 56687/10, 19778/16, 56539/19, 8605/22, 10449/22, 17052/22 and 17407/22 furthermore complained under Article 13 of the Convention of the absence of an effective remedy to obtain compensation for the excessive length of the preliminary investigations. The same complaint was raised in application no. 38296/21 both under Article 13 and Article 14 of the Convention.

THE COURT'S ASSESSMENT

8. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

9. At the outset the Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the complaints raised in applications nos. 56539/19 and 29645/20 under Article 1 of Protocol No. 1 to the Convention fall to be examined under Article 6 of the Convention, and that the complaint raised in application no. 38296/21 under Articles 13 and 14 of the Convention falls to be examined solely under Article 13 of the Convention.

10. The parties disagreed in respect of the applicability of Article 6 of the Convention in its civil limb in the context of criminal proceeding before the applicants as the injured party formally joined the proceedings as a civil party.

11. The Court has summarised the relevant principles in *Fabbri and Others v. San Marino* ([GC], nos. 6319/21 and 2 others, §§ 77-93, 24 September 2024).

12. In that case, the Court considered that neither Article 6, nor any other provision of the Convention, may be interpreted as compelling the Contracting Parties to enable civil claims in respect of damage to be made in criminal proceedings. Nevertheless, while claims in respect of damage normally fall to be brought in the civil courts, a majority of national systems nowadays provide for the possibility of making such claims in the framework of criminal proceedings (at least at certain stages) (ibid., § 84).

13. In this context, the Court found that for Article 6 in its civil limb to be applicable in the context of criminal proceeding, firstly, an applicant must have a substantive civil right (such as the right to compensation for damage sustained) recognised under domestic law and, secondly, the domestic legislator must have endowed the victim of a crime with a (procedural) right of action to pursue that civil right in, and at the relevant stage of, the criminal proceedings complained of. The latter must be proceedings of a judicial nature (ibid., § 88).

14. Furthermore, it found that for Article 6 to apply in its civil limb in the context of the criminal proceedings, the civil right has to be invoked and/or pursued via the appropriate channel, in accordance with the tenets of the domestic legal framework. Thus, where domestic law provides for a formal status of "civil party" Article 6 will apply only if, and from the time when, the applicant has lodged a formal request to obtain such status, even if it has not yet been decided upon. In domestic systems having more flexible and less formalistic approaches (i.e. where no official "civil party" status exists, for example, those systems requiring solely that a civil claim was lodged or brought to the attention of the domestic criminal courts) Article 6 will apply if, and from the moment when, the applicant's pursuance of a civil right was clear, in the light of the tenets of that domestic system (ibid., § 90).

15. Additionally, Article 6 will only apply if the civil right being pursued in the criminal proceedings is not actively being pursued in parallel (in other words, proceedings are not suspended), before some other court or has already been decided or settled elsewhere (ibid., § 92).

16. The Court observes that the Grand Chamber's judgment in *Fabbri and Others* adopted a different approach from that taken in previous cases lodged against Italy, where the Court had found Article 6 applicable in its civil limb at the investigative stage of the proceedings despite the fact that, according to the domestic law, the injured person can join the proceedings as a civil party only at a later stage (see *Sottani v. Italy* (dec.), no. 26775/02, ECHR 2005-III (extracts); *Patrono, Cascini and Stefanelli v. Italy*, no. 10180/04, § 33, 20 April 2006; *Arnoldi v. Italy*, no. 35637/04, § 44, 7 December 2017; and *Petrella v. Italy*, no. 24340/07, § 23, 18 March 2021).

17. In the present case it is not in dispute that as victims of the alleged offences the applicants had a substantive right, recognised under domestic law, to compensation for the damage they had allegedly sustained, this being a civil right, and that Article 76 of the Code of Criminal Procedure ("the CPP") endowed the applicants with a (procedural) right of action to pursue that civil right in the context of the criminal proceedings.

18. As to whether the civil right at issue (compensation for the damage allegedly sustained) was invoked and/or pursued using the appropriate channel, in accordance with the tenets of the domestic legal framework, the Court notes that, in Italy, domestic law provides for a formal status of "civil party", subject to certain conditions. In particular, an injured party must make a formal request by means of a declaration under Article 78 of the CPP to be admitted as a civil party in the criminal proceedings (*dichiarazione di costituzione di parte civile*).

19. The domestic legislation allows a civil claim to be filed within the framework of criminal proceedings only after a suspect or accused person has been committed to trial. Therefore, under domestic law, a victim may claim compensation for loss or damage caused by a criminal offence only once the offender has been officially charged. More specifically, Article 79 of the CCP states that the injured party may apply to join the proceedings as a civil party no earlier than the preliminary hearing (at which the judge is called upon to decide whether the accused should be committed for trial) or equivalent procedural stages.

20. The Court further notes that it is only the civil party who has been duly joined to the proceedings in accordance with the law who has a right to obtain a determination of that civil claim in the case of conviction. Thus, in the absence of a declaration under Article 78 of the CPP, which is necessary to acquire civil-party status (and make an actual claim for compensation), it cannot be considered that a civil right was invoked in the criminal proceedings and/or pursued through the appropriate channel, in accordance with the tenets of the domestic legal framework. Furthermore, if the injured party fails to make the civil claim in the framework of criminal proceedings, this does not prevent that person from having the claim resolved in separate civil proceedings (see Article 75 of the CPP governing the relationship between separate sets of civil and criminal proceedings concerning the same matter).

21. Turning to the circumstances of the present case, the Court observes that the applicants only lodged their criminal complaints and that some of them merely reserved their right to join as civil parties any eventual proceedings. Nevertheless, none of them lodged a declaration under Article 78 of the CPP to be admitted to the criminal proceedings as a civil party as all the proceedings were dismissed by the judge for preliminary investigations – that is, before the preliminary hearing (see paragraph 19 above).

22. Therefore, in light of the principles set forth in the case *Fabbri and Others* (see paragraphs 12-14 above), the Court finds that the proceedings in question did not involve the determination of a "civil right" within the meaning of Article 6 and that this provision did not apply to the proceedings at issue. It follows that the applicants' complaints under Article 6 (see paragraphs 4 and 5 above) are incompatible *ratione materiae* with the provisions of the Convention and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

23. Having regard to the finding that Article 6 of the Convention is inapplicable, Article 13 of the Convention also does not apply in the present case as the applicants did not have an "arguable" complaint under any Article of the Convention or its Protocols (see *Maurice v. France* [GC], no. 11810/03, § 106, ECHR 2005-IX). The complaint is therefore incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 13 March 2025.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President

APPENDIX

List of applications

No.	Application no. Case name Introduction date	Applicant's name Year of birth/registration Place of residence Nationality	Representative's name Location	Domestic proceedings
1.	20507/07 Bernardini and Gaspari v. Italy 04/05/2007	**Domenico BERNARDINI** 1930 Sarezzo Italian **Giuliana GASPARI** 1936 Sarezzo Italian	Gianbattista Ludovico SCALVI Brescia	Criminal complaint for fraud 04/11/2000; and extorsion 06/08/2002 (Mr Bernardini) Brescia office of the prosecution Criminal complaint for fraud and extorsion (Mrs Gaspari) 27/01/2003, Brescia office of the prosecution Decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Brescia District Court R.G. G.I.P. 9219/06, 15/12/2006
2.	40533/09 De Angelis v. Italy 22/06/2009	**Ivo DE ANGELIS** 1953 Folignano Italian	Stefano PIERANTOZZI Ascoli Piceno	Criminal complaint for trespassing 20/02/2004, Ascoli Piceno office of the prosecution Decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Ascoli Piceno District Court R.G. G.I.P. 1369/09, 30/05/2009
3.	17151/10 Spada v. Italy 18/03/2010	**Tommaso SPADA** 1930 Milazzo Italian		**Main proceedings**: Criminal complaint for defamation 05/01/2000, Messina office of the prosecution Decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Messina District Court R.G. G.I.P. 10574/2001, 08/11/2007

No.	Application no. Case name Introduction date	Applicant's name Year of birth/registration Place of residence Nationality	Representative's name Location	Domestic proceedings
				Pinto proceedings: date of introduction: 18/03/2008 Final decision Reggio Calabria Court of Appeal R.G. V.G. 124/08, 25/06/2009 (final 16/09/2010)
4.	42661/10 Lambiase v. Italy 16/06/2010	**Emilio LAMBIASE** 1956 Cava de' Tirreni Italian	Alfonso VISCARDI Salerno	**Main proceedings:** Criminal complaint for forgery 09/02/1998, Salerno office of the prosecution Decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Salerno District Court R.G. G.I.P. unknown, 04/08/2006 **Pinto proceedings:** Date of introduction unknown Judgment Naples Court of Appeal R.G. V.G. 3414/06, 12/05/2007 Judgment Court of Cassation R.G. 14560/08, 10/02/2010
5.	56687/10 Esposito and Others v. Italy 09/09/2010	**Marco ESPOSITO** 1973 Naples Italian	Marco ESPOSITO and Franco VELLA Naples	Criminal complaint for medical malpractice 28/02/2003, Naples office of the prosecution Decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Rome District Court R.G. G.I.P. 16781/06, 10/03/2010

No.	Application no. Case name Introduction date	Applicant's name Year of birth/registration Place of residence Nationality	Representative's name Location	Domestic proceedings
		Paola ESPOSITO 1979 Naples Italian **Francesco ESPOSITO** 1948 Naples Italian		
6.	9518/12 Perri v. Italy 21/11/2011	**Vincenzo PERRI** 1961 Lamezia Terme Italian	Nicolina PERRI Lamezia Terme	**Main proceedings**: Criminal complaint for fraud 13/06/1996, Lamezia Terme office of the prosecution Decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Lamezia Terme District Court R.G. G.I.P. 70/99, 26/03/2007 **Pinto proceedings**: date of introduction: 24/09/2007 Judgment Salerno Court of Appeal R.G. V.G. 507/2007, 09/02/2009 Judgment Court of Cassation R.G. 2236/10, 23/05/2011

No.	Application no. Case name Introduction date	Applicant's name Year of birth/registration Place of residence Nationality	Representative's name Location	Domestic proceedings
7.	7708/14 Parisi v. Italy 19/10/2013	**Paola PARISI** 1940 Milan Italian	Pietro Antonio GIANNI Milan	Criminal complaint for fraud 14/12/2007, Milan office of the prosecution Decision discontinuing the proceedings partially for expiry of statutory limitation, partially on the merits Judge for preliminary investigations Milan District Court R.G. G.I.P. 26560/12, 22/04/2013
8.	19778/16 De Luca v. Italy 26/03/2016	**Patrizia DE LUCA** 1968 Siracusa Italian	Francesco MAGRO Avola	Criminal complaint for forgery 26/07/2008, Syracuse office of the prosecution Decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Syracuse District Court R.G. G.I.P. 3809/15, 14/09/2015 (served on 29/09/2015)
9.	56539/19 Pieroni v. Italy 18/10/2019	**Maurizio PIERONI** 1955 Umbertide Italian	Raffaello AGEA Umbertide	Criminal complaint for stalking 18/04/2012, Perugia office of the prosecution First decision discontinuing the proceedings Judge for preliminary investigations Perugia District Court R.G. G.I.P. unknown, 27/03/2014 Judgment Court of Cassation R.G. 474/15, 10/05/2016 Second decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Perugia District Court R.G. G.I.P. unknown, 15/04/2019 (served on 18/04/2019)

No.	Application no. Case name Introduction date	Applicant's name Year of birth/registration Place of residence Nationality	Representative's name Location	Domestic proceedings
10.	29645/20 Canussio and Others v. Italy 09/07/2020	**Corrado CANUSSIO** 1969 Milan Italian **Alessandro CANUSSIO** 1977 Milan Italian **Carla PIASENTIN** 1944 Milan Italian	Marina Silvia MORI Milan	Criminal complaint for abusive access to computer system and disclosure of confidential information 02/03/2016 and 04/04/2016, Milan office of the prosecution Judgment of discontinuation for death of the accused Milan District Court R.G. 2488/21, 15/03/2022 Criminal complaint for identification of possible accomplices 07/06/2018, Milan office of the prosecution Request of discontinuation of the proceedings for expiry of the deadline to conduct the investigations Milan office of the prosecution R.G.N.R. 64980/18, 23/10/2019 Decision discontinuing the proceedings unknown
11.	44400/20 Garda v. Italy 29/09/2020	**Gaetano GARDA** 1971 Saronno Italian	Fabio MONZA Busto Arsizio	Criminal complaint for defamation 28/07/2016, Busto Arsizio office of the prosecution Decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Busto Arsizio District Court R.G. G.I.P. 78/18, 16/01/2020
12.	7154/21 Rovera v. Italy 27/01/2021	**Giacomo ROVERA** 1939 Acqui Terme Italian	Mara MODICA AMORE Milan	Criminal complaint for defamation 25/01/2017, Alessandria office of the prosecution Decision discontinuing the proceedings on the merits Judge for preliminary investigations Alessandria District Court R.G. G.I.P. 3808/19, 28/07/2020

No.	Application no. Case name Introduction date	Applicant's name Year of birth/registration Place of residence Nationality	Representative's name Location	Domestic proceedings
13.	38296/21 Nuccio v. Italy 23/07/2021	**Biagio NUCCIO** 1969 Tiggiano Italian	Iolanda DE FRANCESCO Corsano	Criminal complaint for forgery 24/11/2016, Lecce office of the prosecution Decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Lecce District Court R.G. G.I.P. 5397/19, 01/02/2021
14.	8605/22 Sforza and Others v. Italy 04/02/2022	**Giuseppina SFORZA** 1969 Collazzone Italian **Michele GROTTOLO** 1968 Riva del Garda Italian **MALÙ S.A.S DI ORNELLA POLONIO & C.** 2012 Piove di Sacco Italian **Paola MILAN** 1973 Vimercate Italian **STEMA S.N.C.** 2011 Rho Italian	Roberto MAZZUCCHI Mestre	Criminal complaints for fraud 24/02/2016 and 27/05/2017, Varese office of the prosecution Decision discontinuing the proceedings on the merits Judge for preliminary investigations Varese District Court R.G. G.I.P. 2309/18, 16/07/2021 (served on 05/08/2021)

No.	Application no. Case name Introduction date	Applicant's name Year of birth/registration Place of residence Nationality	Representative's name Location	Domestic proceedings
15.	10449/22 Semeraro v. Italy 11/02/2022	**Vincenzo SEMERARO** 1960 San Marzano di San Giuseppe Italian	Flaviano BOCCASSINI Taranto	Oral complaint for injuries 06/09/2010, Taranto prison facility Criminal complaint for injuries 28/07/2014, Taranto office of the prosecution Decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Taranto District Court R.G. G.I.P. 4717/17, 22/09/2021
16.	17052/22 Kaur v. Italy 29/03/2022	**Daljit KAUR** 1974 Monteprandone Indian	Luigi SALVATI Rome	Criminal complaints for misappropriation 25/10/2013 and 06/11/2014, Latina office of the prosecution Decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Latina District Court R.G. G.I.P. 4365/18, 30/09/2021
17.	17407/22 Singh v. Italy 29/03/2022	**Jagtar SINGH** 1972 Aprilia Indian	Luigi SALVATI Rome	Criminal complaints for misappropriation 25/10/2013 and 18/12/2014, Latina office of the prosecution Decision discontinuing the proceedings for expiry of statutory limitation Judge for preliminary investigations Latina District Court R.G. G.I.P. 4365/18, 30/09/2021