CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 41889/98
by Alessandro DE ROSA
against Italy

The European Court of Human Rights (Second Section) sitting on 30 March 1999 as a Chamber composed of

Mr C. Rozakis, *President*,
Mr M. Fischbach,
Mr B. Conforti,
Mr P. Lorenzen,
Mrs M. Tsatsa-Nikolovska,
Mr A.B. Baka,
Mr E. Levits, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 30 May 1998 by Alessandro DE ROSA against Italy and registered on 25 June 1998 under file no. 41889/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Italian national, born in 1961 and currently residing in S. Agata de' Goti (Benevento). He is represented before the Court by Mr Antonio Frogiero, a lawyer practising in Benevento.

The facts of the case, as submitted by the applicant, may be summarised as follows.

On an unspecified date, the Benevento Public Prosecutor's Office commenced criminal proceedings against the applicant and one Mr D. on a charge of having carried out building works without the requisite building permit.

In an order of 7 February 1995, the Benevento Public Prosecutor committed the applicant and his co-accused for trial, commencing on 1 June 1995, before the Airola (Benevento) Magistrate. On 3 March 1995, this order was served on the applicant, who was thus informed of the charge brought against him.

The hearing of 1 June 1995 was adjourned, by reason that the lawyers of the Benevento Bar Association were on strike until 24 June 1995. On 9 November 1995, the case was postponed because of the impediment of the Airola Magistrate, the absence of some witnesses and the parties' request. On 14 March 1996, the proceedings were adjourned, because of another lawyers' strike, ending on 13 April 1996. On 19 September 1996, some witnesses were heard.

A hearing scheduled for 6 February 1997 was adjourned at the Public Prosecutor's request. On 17 April 1997, the case was postponed until 3 July 1997 by reason that the lawyers were on strike on 17 April, 15 May, 19 June and 10 July 1997.

The hearing of 3 July 1997 was postponed by the Airola Magistrate of his own motion. On 18 September and 6 November 1997, the case was adjourned by reason that the lawyers of the Benevento Bar Association were on strike from 16 until 20 September and on 6 November 1997. A hearing was scheduled for 15 January 1998, date on which a witness was heard and the parties presented their final pleadings.

In a judgment of 15 January 1998, filed with the court's registry on 22 January 1998, the Airola Magistrate acquitted Mr D. and declared that there was no case to answer against the applicant as the latter had obtained a remission ("*concessione in sanatoria*") from the competent administrative authorities.

COMPLAINT

The applicant alleges that the length of the criminal proceedings instituted against him exceeded the "reasonable time" requirement in Article 6 § 1 of the Convention.

THE LAW

The applicant complains about the length of the proceedings instituted against him. He invokes Article 6 § 1 of the Convention, which, as far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The proceedings at issue began on 3 March 1995, when the applicant was informed of the charge brought against him and ended on 22 January 1998, when the Airola Magistrate's judgment was filed with the court's registry. Their overall length is thus two years, ten months and nineteen days for one instance.

The Court recalls that the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and with the help of the following criteria: the complexity of the case, the conduct of the applicant and the conduct of the authorities dealing with the case (see Kemmache v. France judgment of 27 November 1991, Series A no. 218, p. 27, § 60).

The Court first notes that the case was not particularly complex.

As to the conduct of the national authorities, it observes that on 9 November 1995, the case was adjourned until 14 March 1996 by reason, *inter alia*, of the impediment of the Airola Magistrate and that two hearings on 6 February and 3 July 1997 were postponed respectively until 17 April and 18 September 1997 at the Public Prosecutor's request and by the Magistrate of his own motion. As a result, the State authorities were responsible for a delay of nine months.

However, it is to be noted that five hearings (1 June 1995, 14 March 1996, 17 April, 18 September and 6 November 1997) were adjourned because of the lawyers' strikes. The Court recalls that an event of that kind cannot in itself render a Contracting State liable with respect to the "reasonable time" requirement; however, the efforts made by the State to reduce any resultant delay are to be taken into account for the purposes of determining whether the requirement has been complied with (see Papageorgiou v. Greece judgment of 22 October 1997, *Reports of Judgments and Decisions* 1997-VI, pp. 2290-2291, § 47).

In the present case, after each lawyers' strike, the Italian authorities adjourned the case respectively to 9 November 1995, 19 September 1996, 3 July 1997, 6 November 1997 and 15 January 1998. As a consequence, the delays were of five months and eight days, six months and five days, two months and sixteen days, one month and nineteen days and two months and nine days respectively.

Even if some of these delays could have been reduced by fixing the subsequent hearings at an earlier date, the Court considers that in the circumstances of the present case - where a number of lawyers' strikes of varying duration took place in a period of less than two years and five months - the corresponding total period of inactivity of one year, five months and twenty-seven days cannot be attributed to the respondent Government.

Therefore, having regard to the overall duration of the proceedings – a period which does not seem *prima facie* unduly long – and to the delays due to the lawyers' strikes, the Court considers that the length of the proceedings at issue does not disclose any appearance of a violation of Article 6 § 1 of the Convention.

It follows that the application must be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Christos Rozakis
President