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. 41203/98
by Antonio MARAZZO
against Italy

The European Court of Human Rights (Second Section) sitting on 23 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 December 1997 by Antonio MARAZZO against Italy and registered on 14 May 1998 under file no. 41203/98;

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

Having regard to the observations submitted by the respondent Government on 1 December 1998 and the observations in reply submitted by the applicant on 1 February 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Italian national, born in 1929 and currently residing in Casandrino (Naples).

He is represented before the Court by Mr Andrea Di Maio, a teacher residing in Qualiano (Naples).

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

On 26 September 1991, the Qualiano police seized a cottage belonging to the applicant. Criminal proceedings were subsequently instituted against him for having built the said cottage without the prescribed building permit.

In an order of 20 November 1993, the Public Prosecutor committed the applicant for trail, commencing on 21 June 1994, before the Marano (Naples) Magistrate.

Three hearings on 21 June 1994, 13 February and 25 June 1995 were adjourned because of a number of lawyers' strikes. On 17 October and 12 December 1995, some witnesses were heard and the parties presented their final pleadings.

In a judgment of 12 December 1995, filed with the registry on 30 January 1996, the Marano Magistrate sentenced the applicant to three months' imprisonment and to a fine of 42,000,000 lire. He furthermore ordered that the applicant's cottage be demolished. This judgment was served on the applicant on 22 February 1996.

On 13 March 1996, the applicant lodged an appeal with the Naples Court of Appeal. He was seeking an acquittal or, in the alternative, a declaration that the charge against him was time-barred. The hearing was held on 9 July 1997.

In a judgment of the same day, filed with the court's registry on 14 July 1997, the Naples Court of Appeal held that the charge against the applicant was time-barred and consequently annulled the impugned judgment and revoked the demolition order. This decision, served on the applicant on 25 August 1997, became final on 16 October 1997.

On 23 November 1997, the Qualiano police lifted the seizure of the applicant's cottage.

COMPLAINT

The applicant complains of the length of the proceedings and invokes Article 6 § 1 of the Convention.

PROCEDURE

The application was introduced on 30 December 1997 and registered on 14 May 1998.

On 10 September 1998, the European Commission of Human Rights decided to give notice of the application to the respondent Government, and invited them to submit their observations on its admissibility and merits.

The Government submitted their observations on 1 December 1998, to which the applicant replied on 1 February 1999.

By virtue of Article 5 § 2 of Protocol No. 11 to the Convention, which entered into force on 1 November 1998, the application shall thereafter be examined by the European Court of Human Rights.

THE LAW

The applicant's complaint relates to the length of the proceedings in question. He invokes Article 6 § 1 of the Convention, which provides *inter alia* that proceedings must be terminated within a “reasonable time”.

There is disagreement between the parties as to the starting point of the period to be taken into consideration. According to the Government, the proceedings at issue began on 20 November 1993, when the Public Prosecutor committed the applicant for trial before the Marano Magistrate. The applicant submits that the proceedings started on 26 September 1991, when his cottage was seized by the Qualiano police.

The Court recalls that according to its well-established case-law, in criminal matters the “reasonable time” referred to in Article 6 § 1 begins to run when the situation of the suspect has been substantially affected (see Eckle v. Germany judgment of 15 July 1982, Series A no. 51, p. 33, § 73). In the present case, the Court considers that the applicant must have been so affected when the Qualiano police seized his cottage.

The proceedings against the applicant ended on 16 October 1997, when the Naples Court of Appeal’s judgment became final.

The Government consider that, having regard to the circumstances of the case and, in particular, to the fact that the hearings of 21 June 1994, 13 February and 25 June 1995 were adjourned because of a number of lawyers’ strikes, the overall duration of the proceedings cannot be seen as unreasonable. On the other hand, they note that the applicant benefited from the delays which affected the proceedings, as the charge brought against him was declared time-barred and he was restored in the possession of the cottage unlawfully built.

According to the applicant, the length of the proceedings - a period of six years and twenty days - is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. He points out that his case was a very simple one and considers that the adjournments due to the lawyers’ strikes cannot justify the overall duration of the first-instance trial. He furthermore observes that his cottage had a very low market value.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

For these reasons, unanimously / by a majority >, the Court

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Erik Fribergh
Registrar

Christos Rozakis
President