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

FIRST SECTION

DECISION

Application no. 37937/17
Luigi SANNINO
against Italy

The European Court of Human Rights (First Section), sitting on 4 July 2023 as a Committee composed of:

Péter Paczolay*, President*,
Gilberto Felici,
Raffaele Sabato*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 37937/17) 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") on 16 May 2017 by an Italian national, Mr Luigi Sannino ("the applicant"), who was born in 1957, lives in Naples and was represented by Mr G. Granata, a lawyer practising in Naples;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the excessive length of domestic proceedings (lasting 6 years and 4 months) for offences falling within the jurisdiction of a justice of the peace (*giudice di pace*) and the fact that an injured party could not submit a request for compensation for the excessive length of proceedings before joining the proceedings as a civil party.

2. On 28 January 2008 the applicant lodged a complaint of defamation against A.N. with the Naples public prosecutor.

3. On 15 December 2015 the Naples public prosecutor requested the Naples justice of the peace that the case against A.N. be discontinued (*richiesta di archiviazione*).

4. On 16 March 2016 the applicant lodged with the justice of the peace an objection against the public prosecutor's request to discontinue the proceedings.

5. On 10 May 2016 the Naples justice of the peace rejected the applicant's objection and declared the charges time-barred.

6. On 21 November 2016 the Naples Court of Appeal rejected an application by the applicant for compensation in respect of the excessive length of the proceedings under section 2 of Law no. 89/2001 ("the Pinto Act"), reasoning that an injured party could not submit a request for compensation for the excessive length of proceedings until he or she joined the proceedings as a civil party (*costituzione di parte civile*).

7. The applicant complained under Article 6 § 1 of the Convention of the excessive length of the domestic proceedings. He also implicitly complained under Article 13 of the Convention that, according to well-established domestic case-law, an injured party could not submit a request for compensation for the excessive length of proceedings before joining the proceedings as a civil party.

THE COURT'S ASSESSMENT

8. According to the general principles established by the Court's case-law, Article 6 § 1 of the Convention applies to proceedings involving civil-party complaints from the moment the complainant is joined as a civil party, unless he or she has waived the right to reparation in an unequivocal manner (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I).

9. Considering that, according to Italian law, an injured party cannot join the proceedings as a civil party until the preliminary hearing (*udienza preliminare*), the Court extended the applicability of Article 6 § 1 of the Convention to an injured party who could not join the proceedings as a civil party but who nonetheless exercised the rights and faculties (*facoltà*) conferred by law in order to protect his or her civil rights and obligations (see *Sottani v. Italy* (dec.), no. 26775/02, ECHR 2005-III (extracts); *Patrono, Cascini and Stefanelli v. Italy*, no. 10180/04, § 31, 20 April 2006; *Arnoldi v. Italy*, no. 35637/04, §§ 27-30, 7 December 2017; and *Petrella v. Italy*, no. 24340/07, § 22, 18 March 2021).

10. Under Italian law, an injured party may pursue a civil action in ordinary criminal proceedings before a district court or an equivalent body by joining the proceedings as a civil party (Articles 74 and 76 of the Code of Criminal Procedure). The request to join the proceedings as a civil party should be submitted at the preliminary hearing. After the opening of the trial, the injured party can no longer join the proceedings (Article 79 of the Code of Criminal Procedure). Thus, civil-party proceedings are brought "by intervention", after the prosecution has begun.

11. Proceedings for offences falling within the jurisdiction of a justice of the peace are governed by special provisions, in particular by Legislative Decree (*decreto legislativo*) no. 274/2000. In such proceedings, the injured party may join the proceedings as a civil party "by intervention" when the accused is committed for trial by the prosecutor (Article 20 of Legislative Decree no. 274/2000), as is the case in ordinary proceedings before a district court (Article 2 of Legislative Decree no. 274/2000, referring to the Code of Criminal Procedure, see paragraph 10 above).

12. Nonetheless, in the case of offences prosecuted before a justice of the peace following a complaint lodged by the injured party (*querela di parte*), the injured party may pursue a civil action not only "by intervention", but also "by instigation", which is to say by making a direct application for a summons in respect of the accused (*ricorso immediato*) to the justice of the peace. The direct application for a summons should contain: a determination of the competent tribunal; the identity of the applicant; the identity of the lawyer and the appointment document; the identity of other possible injured parties; the identity of the accused; a clear and precise description of the facts with references to the alleged relevant offences; the relevant documents; the evidence supporting the complaint and the facts that are expected to be the object of the witnesses' testimony; and the request to schedule a hearing (Article 21 of Legislative Decree no. 274/2000).

13. The application must be lodged with the registry of the competent justice of the peace within three months of the injured party becoming aware of the offence (Article 22 of Legislative Decree no. 274/2000).

14. The request to join the proceedings as civil party must be attached to the direct application for a summons, failing which it may be judged inadmissible. A claim for compensation is tantamount to a request to join the proceedings as a civil party (Article 23 of Legislative Decree no. 274/2000).

15. In the case at hand, the applicant could have submitted a direct application for a summons in respect of the accused under Article 21 of Legislative Decree no. 274/2000, as the alleged offences could be prosecuted following a complaint by the injured party and fell within the jurisdiction of the justice of the peace. The jurisdiction of the justice of the peace over the crimes allegedly committed was apparent *ab initio* from the applicant's complaint, which expressly referred to the applicable provisions of the Criminal Code. Furthermore, that complaint shows that the applicant had at his disposal all the information required to submit a valid direct application for a summons.

16. Had the applicant submitted a direct application for a summons in respect of the accused to the justice of the peace, he could have immediately joined the proceedings as a civil party "by instigation". However, the applicant did not lodge such an application or provide any reasons for his failure to do so.

17. Since the applicant decided not to submit a direct application for a summons in respect of the accused, he renounced his right to immediately join the proceedings as a civil party "by instigation". Therefore, he did not exercise the rights and faculties conferred on him by law and, at this stage of the procedure, he did not demonstrate that he aimed to secure reparation, albeit symbolic, or to protect a civil right. Thus, he cannot rely on Article 6 § 1 of the Convention (see *Baudoin v. France*, no. 35935/03, § 13, 27 September 2007, and, *a contrario*, *Perez*, cited above, §§ 70-74).

18. Therefore, the Court concludes that Article 6 § 1 of the Convention does not apply and, accordingly, the complaint raised under Article 6 § 1 of the Convention is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a).

19. As regards the complaint under Article 13, the Court reiterates that this Article does not apply in the absence of an arguable claim (see *Maurice v. France* [GC], no. 11810/03, § 106, ECHR 2005-IX). Bearing in mind its above conclusion under Article 6 § 1 of the Convention, Article 13 does not apply in the present case and must therefore be declared inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 September 2023.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President