



Excessive length of defamation proceedings and lack of access to a court entailed a violation of the applicant's rights

In today's **Chamber judgment**¹ in the case of [Petrella v. Italy](#) (application no. 24340/07) the European Court of Human Rights held, that there had been:

unanimously, a **violation of Article 6** (right to a fair hearing within a reasonable time) of the European Convention on Human Rights,

by five votes to two, a **violation of Article 6** (right of access to a court) as the applicant had been deprived of access to a court, and

unanimously, a **violation of Article 13** (right to an effective remedy).

The case concerned the length of the preliminary investigations in the context of criminal proceedings brought on the basis of a complaint by the applicant for defamation, the lack of an effective remedy in respect of the length of the proceedings and the discontinuance of those proceedings because the charges became time-barred.

The Court found in particular that the preliminary investigations prior to the discontinuance had lasted for about five years and six months. This excessive duration had breached the "reasonable time" requirement. It was solely because of the delay on the part of the prosecuting authorities and the fact that the charges had become time-barred that the applicant had been unable to submit his compensation claim to obtain a decision by the criminal court. The negligent conduct of the authorities had thus deprived him of the prospect of having his civil claim addressed in the type of proceedings that he had chosen, as made available by domestic law. The Court reiterated that a complainant could not be obliged to bring an action, for the same purpose of engaging civil liability, before a civil court after criminal proceedings capable of addressing a civil claim had become time-barred through the fault of the authorities.

Lastly, as the "Pinto" remedy had not been available to victims who were unable to join criminal proceedings as a civil party, the Court found that in domestic law there had been no remedy by which the applicant could have complained about the length of the proceedings.

Principal facts

The applicant, Mr Vincenzo Petrella, is an Italian national who was born in 1951 and lives in Caserte (Italy). In addition to practising law he was, at the material time, the Chairman of "Casertana" football club.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Between 22 and 25 July 2001 he was accused of serious fraud and corruption offences in articles published in the *Corriere di Caserta* newspaper together with his photo. He filed a criminal complaint on 28 July 2001 for aggravated defamation through the press, on the grounds that the articles had impugned his honour and reputation. In his complaint he clarified that he intended to join the proceedings as a civil party and claim ten billion Italian liras (about five million euros) in damages.

On 10 September 2001 the case was referred to the public prosecutor of the Salerno District Court. On 9 November 2006 the public prosecutor ultimately decided to drop the charges as they were time-barred. On 17 January 2007 the preliminary investigations judge of Salerno discontinued the proceedings.

Under Article 79 of the Code of Criminal Procedure, a victim can only join criminal proceedings as a civil party from the time of the preliminary hearing, the stage in the proceedings when the judge is called upon to decide whether to commit the defendant to stand trial.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 6 § 1 (right to a fair trial within a reasonable time/lack of access to a court) and Article 13 (right to an effective remedy), the applicant complained of the excessive length of the criminal proceedings, submitting that by discontinuing them the authorities had prevented him from having access to a court. He also complained of the ineffectiveness of the “Pinto” remedy under which a victim who had not joined the proceedings as a civil party could not use that remedy.

The application was lodged with the European Court of Human Rights on 1 June 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Linos-Alexandre **Sicilianos** (),
Pere **Pastor Vilanova** (Andorra),
Péter **Paczolay** (Hungary),
Gilberto **Felici** (San Marino),
Raffaele **Sabato** (Italy),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court observed that the period to be taken into account had begun on 28 July 2001, the date on which the applicant had filed his complaint, and ended on 17 January 2007, the date of the discontinuance decision. This period had lasted for about five years and six months solely for the preliminary investigation phase. The case had not been a specially complex one and, during that period, no investigative activity had taken place. The Government had not submitted any arguments to justify the need to prolong the investigations for such a duration.

The Court thus found a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings which had not met the “reasonable time” requirement.

The Court then referred to precedents where it had found a violation of Article 6 of the Convention when the discontinuance of the criminal proceedings and the failure to examine a civil claim were due to circumstances that could mainly be attributed to the judicial authorities, in particular to excessive procedural delays causing the offence to become time-barred. The Court observed that

the applicant had availed himself of the rights and prerogatives available to him under domestic law in the context of the criminal proceedings and would thus have been able, at the preliminary hearing, to assert his civil claim. It was solely as a result of the delays in the handling of the case by the prosecuting authorities, and the ensuing discontinuance of the proceedings as time-barred, that he had not been able to submit his claim for compensation or to obtain a decision on that claim by the criminal court.

The Court concluded that this negligent conduct on the part of the authorities had deprived the applicant of the prospect of having his civil rights determined in the type of proceedings that he had chosen to bring, as made available to him under domestic law. The Court reiterated that a claimant could not be required to bring a new action in a civil court, for the same purposes of engaging civil liability, where the criminal proceedings capable of addressing the claim had become time-barred through the fault of the criminal authorities. Such an action would probably entail the need to gather the evidence afresh, for which the applicant would henceforth be responsible, and to establish possible liability could prove to be extremely difficult such a long time after the event.

There had thus been a violation of Article 6 § 1 of the Convention on account of a lack of access to a court.

Article 13

The Court observed that the principles of the “Pinto Act” (n° 89 de 2001) and the relevant domestic law had shown that the “Pinto” remedy had not been available to victims who were unable to join criminal proceedings as a civil party.

It thus found that there had been a violation of Article 13 of the Convention on account of the fact that in domestic law there had been no remedy by which the applicant could have asserted his right to have his case heard within a reasonable time within the meaning of Article 6 § 1 of the Convention.

Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant 5,200 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses.

Separate opinion

Judges Wojtyczek and Sabato each expressed a partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.