



Failure to adjudicate civil claim of victims of alleged offences in criminal proceedings did not breach the Convention

The case [Fabbri and Others v. San Marino](#) (applications nos. 6319/21, 6321/21 and 9227/21) concerned three individuals who participated in criminal proceedings as victims of alleged offences. They complained that they could not have their civil claims adjudicated in those proceedings because delays in the investigations had led to the alleged offences becoming time-barred in 2020.

In today's **Grand Chamber judgment**¹ in the case the European Court of Human Rights held, unanimously, that there had been **no violation of Article 6 § 1 (right of access to court)** of the European Convention on Human Rights **as concerned one of the applicants, Mr Forcellini (application no. 9227/21)**. The Court found in particular that Mr Forcellini had not pursued his interests diligently – only bringing a civil claim in the context of the criminal complaint three and a half years after the alleged offence had been committed and just a few days before the expiry of the limitation period in respect of the alleged offence. In such circumstances it was relevant that other avenues to pursue his civil claims had been open to him such as bringing separate civil proceedings immediately after the alleged offence or when he had been notified of the decision to discontinue the criminal proceedings.

The Court also held, by a majority, that **applications nos. 6319/21 and 6321/21 were inadmissible**. It found that the two remaining applicants had not lodged a formal request via a signed declaration to obtain the status of “civil party”, as was required under San Marino law. They had therefore not clearly shown that they attached importance to their right to compensation for any damage sustained.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicants, Stellino Fabbri, Andrea Forcellini and Angelina Marro, are two San Marinese and one Italian national respectively. They were born in 1955, 2003 and 1973 and live in San Marino.

In 2016 Mr Fabbri and Ms Marro lodged a criminal complaint for bodily harm against a third individual, N. They alleged that N. had attacked first Ms Marro and then Mr Fabbri when he had tried to intervene. In their complaint they reserved their right to join, as civil parties, any eventual criminal proceedings. As a result, a criminal investigation was opened.

In 2015 Mr Forcellini, 12 years old at the time, was allegedly the victim of bullying during a school trip. In 2018 a criminal investigation was opened *ex officio* against two minors for violence and persecution against Mr Forcellini. In 2019 his mother submitted, on his behalf, a formal request to join the criminal proceedings as a civil party.

The investigating judge assigned to both cases did not, however, take any steps. This resulted in the charges becoming time-barred and in 2020 the Prosecutor agreeing to discontinue the cases.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on various dates in 2021.

Relying on Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, the applicants complained that the time-barring as a result of the authorities' inaction had led to their being unable to have their civil claims adjudicated in the criminal proceedings; thus, they alleged that they had been denied access to court.

In its [judgment](#) of 18 October 2022, the Court held, by 4 votes to 3, that there had been a violation of Article 6 § 1 of the European Convention on Human Rights in respect of the three applicants. The Court found in particular that the circumstances leading to the failure to consider the applicants' civil-party claims during the criminal proceedings had been entirely attributable to the judicial authorities, whose total inactivity had resulted in the prosecution becoming time-barred. In such extreme circumstances, it could not be expected of the applicants to pursue a separate civil action.

On 6 March 2023 the three applications were referred to the Grand Chamber at the San Marinese Government's request.

The Government of Italy were granted leave to intervene in the proceedings as a third party.

A [hearing](#) took place in public in the Human Rights Building, Strasbourg, on 12 July 2023.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Síofra O'Leary (Ireland), *President*,
Marko Bošnjak (Slovenia),
Gabriele Kucsko-Stadlmayer (Austria),
Pere Pastor Vilanova (Andorra),
Arnfinn Bårdsen (Norway),
Georges Ravarani (Luxembourg),
Krzysztof Wojtyczek (Poland),
Egidijus Kūris (Lithuania),
Ivana Jelić (Montenegro),
Gilberto Felici (San Marino),
Darian Pavli (Albania),
Erik Wennerström (Sweden),
Lorraine Schembri Orland (Malta),
Peeter Roosma (Estonia),
Ana Maria Guerra Martins (Portugal),
Andreas Zünd (Switzerland),
Davor Derenčinović (Croatia),

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

Decision of the Court

The Grand Chamber clarified which criteria were relevant when deciding whether Article 6 applied in proceedings where a member State provided for the right to bring a civil claim in the context of criminal proceedings. It noted that the majority of national legal systems nowadays did provide for the possibility to bring such claims, but that there was no obligation under the European Convention on member States to do so.

Firstly, it stated that an applicant had to have a substantive civil right, recognised under national law, such as compensation for damage allegedly sustained. Furthermore, victims of a crime had to have the possibility in law to pursue that civil right in the context of criminal proceedings and at the

relevant stage thereof. Those requirements had been met in respect of all three applicants in this case as the law in San Marino provided for that substantive civil right as well as for the procedural right of action to pursue that civil right in the context of the criminal proceedings, including at the investigation stage before the investigating judge which was relevant to the present cases.

It went on to note that applicants also had to invoke and/or pursue this civil right using the appropriate channel, in accordance with the tenets of the national legal framework; and, they had to clearly demonstrate that they attached importance to this right, by for example lodging a formal request to obtain the status of “civil party”, where this was provided for in domestic law, as was the case under the San Marino legal framework.

In applications nos. 6319/21 and 6321/21 Mr Fabbri and Ms Marro had not submitted such a formal request. To obtain the formal status of “civil party” in San Marino, an injured party had to sign a declaration (under Article 7 of the CCP). These two applicants had merely reserved their right to join any eventual proceedings, without signing such a declaration. They had not therefore demonstrated the importance they attached to securing their right to financial reparation for any damage sustained.

The Court thus found that the proceedings in respect of Mr Fabbri and Ms Marro had not concerned a “civil right” within the meaning of Article 6 and that that provision did not apply in their case. It followed that their complaints were inadmissible.

Mr Forcellini, on the other hand, had formally requested to join the proceedings as a “civil party” through a declaration his mother had signed on his behalf under Article 7 of the CCP. Article 6 of the Convention was therefore applicable to the proceedings in his case and the Court proceeded to examine his complaints on the merits.

The Court clarified the approach to be taken in access to court complaints in this context. It affirmed that, as a rule, the discontinuance of criminal proceedings with the result that a civil claim could not be determined therein did not result in a violation of the right of access to a court if the applicant had from the outset an alternative avenue of redress capable of determining the civil claim at issue. However, it considered that, in the exceptional circumstance that the lawful discontinuance of the criminal proceedings was the result of a serious dysfunction of the domestic system and the applicant had acted diligently, it would be possible to consider that the applicant had had a legitimate expectation to have those claims determined in that avenue irrespective of any other available remedy *ab initio*, and that on the facts before it, it would not be reasonable to expect the applicant to pursue any other available civil remedy thereafter, and therefore find that there had been a violation of Article 6.

In relation to Mr Forcellini’s case, the Court noted that there had been no adequate explanation for the investigating judge’s inaction following the opening of the criminal file. There was no dispute that that had been the result of a serious dysfunction in the domestic system at the time, which had led to around 800 such investigations becoming time-barred. The Government had argued that at the time there had been a spike in serious crime in San Marino.

That dysfunction had not, however, been the sole reason behind the failure to consider Mr Forcellini’s civil claim in the avenue that he had chosen. Mr Forcellini – or his parents on his behalf – had not pursued his interests diligently. He had not attempted to bring his civil claim (separately or in the context of the ongoing criminal proceedings) until 2019, a few days before the expiry of the limitation period in respect of the alleged offence, even though the alleged offence had taken place in 2015.

He could have brought separate civil proceedings either following the alleged offence – instead of joining the criminal proceedings years later – or once he had been notified of the decision to discontinue the criminal proceedings. Indeed, most recently – in July 2023 – when the Grand

Chamber held a public hearing, he had still been considering whether to bring separate civil proceedings.

The Court did not therefore find that the very essence of Mr Forcellini's rights had been impaired to the extent that he had been denied access to a court for the determination of his civil rights.

Separate opinions

Judge Schembri Orland expressed a concurring opinion, while Judges Bošnjak, Pastor Vilanova, Kūris, Jelić, Felici, Guerra Martins and Derenčinović expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and 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.