CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF RICCARDI PIZZATI v. ITALY

(Application no. 62361/00)

JUDGMENT

STRASBOURG

10 November 2004

THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED JUDGMENT IN THE CASE ON
…

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Riccardi Pizzati v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
Mr L. FERRARI BRAVO, ad hoc *judge*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 21 October 2004,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 62361/00) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mrs Gina Riccardi Pizzati ("the applicant"), on 2 April 1998.

2. The Italian Government ("the Government") were represented successively by their Agents, Mr U. Leanza and Mr I.M. Braguglia, and their co-Agents, Mr V. Esposito and Mr F. Crisafulli. Mr V. Zagrebelsky, the judge elected in respect of Italy, withdrew from sitting in the case (Rule 28 of the Rules of Court). The Government accordingly appointed Mr L. Ferrari Bravo to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

3. On 22 January 2004 the Court declared the application admissible.

THE FACTS

4. The applicant was born in 1924 and lives in Piacenza.

1. The principal proceedings

5. On 8 April 1974 the applicant sued M.P. in the Piacenza District Court seeking damages for the loss she had sustained as a result of works carried out by her neighbour which had resulted, among other things, in sewage being dumped on her property.

6. Preparation of the case for trial began on 11 May 1974. Of the sixty-six hearings scheduled between 11 November 1974 and 15 June 1995 nineteen were adjourned at the request of the parties, three at the request of the applicant, two at the request of M.P., four by the court of its own motion, and one on account of a lawyers' strike; twelve were devoted to organising expert evidence, twelve to the filing of documents and the hearing of witnesses, twelve to attempts to seek a friendly settlement, and one was adjourned in order to allow the parties to make their submissions.

7. In the meantime M. P.'s lawyer had filed a death certificate with the registry in respect of his client. At a hearing on 29 February 1996 the judge declared the proceedings interrupted. On 25 September 1996 the parties resumed the proceedings and the judge fixed 11 June 1998 as the date for hearing submissions. On an unspecified date the case was referred to the panel of judges dealing with the oldest cases (*Sezioni Stralcio*). At a hearing on 18 November 1999 the parties requested that a date be fixed for hearing oral submissions and the judge adjourned the case to 8 June 2000. The hearing was not held on that date, but adjourned to 12 June 2000. On that date the judge allowed the parties to take the files out.

8. In a judgment of 23 October 2000, the text of which was deposited with the registry on the same day, the Piacenza Court allowed the applicant's claim in part and ordered M. P.'s heir to move the septic tank that had not been installed at the prescribed distance and to replace part of the applicant's sullage pipes. It also awarded her 15,000,000 Italian lire (7,747 euros).

2. The "Pinto" proceedings

9. On 17 October 2001 the applicant lodged an application with the Ancona Court of Appeal under Law no. 89 of 24 March 2001, known as the "Pinto" Act, complaining of the excessive length of the above-described proceedings. The applicant requested the court to rule that there had been a breach of Article 6 § 1 of the Convention and to order the Italian Government to pay compensation for the non-pecuniary damage sustained. The applicant claimed 200,000,000 Italian lire (103,291.37 euros (EUR)) in non-pecuniary damages.

10. In a decision of 31 January 2002, the text of which was deposited with the registry on 13 February 2002, the Court of Appeal found that a reasonable time had been exceeded. It dismissed the claim for pecuniary damages on the ground that the applicant had failed to substantiate it, awarded her EUR 5,000 on an equitable basis in compensation for the non-pecuniary damage and EUR 860 for costs and expenses. The decision was served on the applicant on 13 March 2002.

11. The applicant appealed to the Court of Cassation against that decision on 21 May 2002 on the ground that the amount awarded her by the Court of Appeal was inadequate.

12. However, in a judgment of 12 November 2002, the text of which was deposited with the registry on 3 January 2003, the Court of Cassation declared the appeal inadmissible on the ground that it had been lodged out of time. The authorities paid the amounts due on 23 December 2003.

13. In a letter of 25 August 2003 the applicant informed the Court of the outcome of the domestic proceedings and asked it to resume its examination of her application.

THE LAW

I. OBJECTION OF INADMISSIBILITY RAISED BY THE GOVERNMENT

14. The Government raised an objection on grounds of non-exhaustion of domestic remedies since the applicant's appeal on points of law had been lodged out of time. The success of other applicants who had used that remedy showed that it was an effective one. In support of their submission, they relied on the four judgments of the plenary Court of Cassation.

15. The Court notes that it has already dismissed the Government's objection concerning the existence of a domestic remedy in its admissibility decision of 22 January 2004.

16. The Court also reiterates its previous finding that it was reasonable to assume that after 26 July 2004 the public could no longer have been unaware of the Court of Cassation's new precedent, particularly its judgment no. 1340, and that it was from that date onwards that applicants had to be required to use that remedy for the purposes of Article 35 § 1 of the Convention (see *Di Sante v. Italy* (dec.), no. 56079/00, 24 June 2004).

Since the time-limit for lodging an appeal with the Court of Cassation expired before 26 July 2004, the Court considers that in the circumstances the applicant was exempted from the obligation to exhaust remedies.

17. The Court considers that the Government based their objection on arguments that were not such as to call into question its admissibility decision. Accordingly, the objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

18. The applicant complained that the length of the proceedings had failed to comply with the "reasonable-time" principle envisaged in Article 6 § 1 of the Convention which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

19. The Government contested that argument.

20. The Court reiterates that in its admissibility decision of 22 January 2004 it held that in awarding the sum of EUR 5,000 in compensation for non-pecuniary damage under the Pinto Act the Court of Appeal had failed to sufficiently and properly remedy the breach of which the applicant complained.

21. The period to be taken into consideration began on 8 April 1974 and ended on 23 October 2000. It therefore lasted more than twenty-six years and six months for one level of jurisdiction.

22. The Court reiterates its previous finding in many judgments (see, for example, *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V) that in Italy there is a practice incompatible with the Convention resulting from an accumulation of breaches of the "reasonable-time" requirement. Where the Court finds such a breach, this accumulation constitutes an aggravating circumstance of the violation of Article 6 § 1.

23. Having examined the facts of the case in the light of the parties' arguments, and having regard to its case-law on the question, the Court considers that the length of the proceedings complained of did not satisfy the "reasonable-time" requirement and that this was one more instance of the above-mentioned practice.

There has accordingly been a violation of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Reiteration of the criteria followed by the Court

1. General criteria

25. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences.

If the domestic law allows only partial reparation to be made, Article 41 of the Convention gives the Court the power to award compensation to the party injured by the act or omission in respect of which a violation of the Convention has been found. The Court enjoys a certain discretion in the

exercise of that power, as the adjective “just” and the phrase “if necessary” attest.

Among the matters which the Court takes into account when assessing compensation are pecuniary damage, which is the loss actually suffered as a direct result of the alleged violation, and non-pecuniary damage, which is reparation for the anxiety, inconvenience and uncertainty caused by the violation, and other non-pecuniary loss.

In addition, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

2. Criteria specific to non-pecuniary damage

26. As regards an equitable assessment of the non-pecuniary damage sustained as a result of the length of proceedings, the Court considers that a sum varying between EUR 1,000 and 1,500 per year’s duration of the proceedings (and not per year’s delay) is a base figure for the relevant calculation. The outcome of the domestic proceedings (whether the applicant loses, wins or ultimately reaches a friendly settlement) is immaterial to the non-pecuniary damage sustained on account of the length of the proceedings.

The aggregate amount will be increased by EUR 2,000 if the stakes involved in the dispute are considerable, such as in cases concerning labour law, civil status and capacity, pensions, or particularly serious proceedings relating to a person’s health or life.

The basic award will be reduced in accordance with the number of courts dealing with the case throughout the duration of the proceedings, the conduct of the applicant – particularly the number of months or years due to unjustified adjournments for which the applicant is responsible – to the stakes involved in the dispute – for example where the financial stakes are of little importance for the applicant – and on the basis of the standard of living in the country concerned. A reduction may also be envisaged where the applicant has been only briefly involved in the proceedings, having continued them in his or her capacity as heir.

The amount may also be reduced where the applicant has already obtained a finding of a violation in domestic proceedings and a sum of money by using a domestic remedy. Apart from the fact that the existence of a domestic remedy is in full keeping with the subsidiarity principle embodied in the Convention, such a remedy is closer and more accessible than an application to the Court, is faster, and is processed in the applicant’s own language; it thus offers advantages that need to be taken into consideration.

B. Application of the above criteria to the instant case

1. Pecuniary and non-pecuniary damage

27. The applicant left to the Court's discretion the assessment of both the pecuniary and non-pecuniary damage sustained. She requested the Court to take into consideration the fact that her courtyard had been transformed into a sewer, which prevented her from selling her house and moving closer to her children, had caused her tenants to quit and deprived her of the means necessary to carry out the requisite work after sewage had seeped into the cellar and the foundations of the house.

28. The Government disputed those claims.

29. The Court does not discern any causal connection between the violation found and the pecuniary damage alleged, and rejects this claim.

30. As regards non-pecuniary damage, however, the Court considers that in respect of proceedings which lasted more than twenty-six years for one level of jurisdiction EUR 46,000 could be regarded as an equitable sum. However, the Court notes that the applicant's conduct did slightly contribute to delaying the proceedings. Accordingly, the Court considers that the applicant should be awarded EUR 36,000 less 30% on account of the finding of a violation by the domestic court (see paragraph 26 above), that is, EUR 25,200.

31. From that sum should also be deducted the amount of compensation awarded to the applicant at domestic level, that is, EUR 5,000. Accordingly, the applicant is entitled to EUR 20,200 in compensation for non-pecuniary damage, plus any tax that may be chargeable.

2. Costs and expenses

32. The applicant also claimed reimbursement of part of the costs and expenses incurred in the domestic court, but did not quantify them. With regard to the "Pinto" proceedings she claimed reimbursement of the costs in respect of the proceedings before the Court of Cassation, that is, EUR 2,206.57.

33. The Government contested those claims.

34. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court dismisses the claim for costs and expenses in respect of the domestic proceedings that have not been made out.

With regard to the proceedings before the Court of Cassation the Court reiterates that the proceedings resulted in an inadmissibility decision because the appeal had been submitted out of time. In so far as it was

dismissed on account of a failure by the applicant's lawyer to comply with a formality, the Court considers that it was an error of which the Government cannot be expected to bear the consequences, and accordingly rejects the claim.

3. Default interest

35. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   a) that the respondent State shall pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following sums:
      i. EUR 20,200 (twenty thousand two hundred euros) in respect of non-pecuniary damage ;
      ii. any tax that may be chargeable on the above amount;
   b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 10 November 2004 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President