



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

SECOND SECTION

CASE OF GAGLIANO GIORGI v. ITALY

(Application no. 23563/07)

[Extracts]

JUDGMENT

STRASBOURG

6 March 2012

FINAL

24/09/2012

This judgment has become final under Article 44 § 2 of the Convention.

In the case of Gagliano Giorgi v. Italy,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

Işıl Karakaş,

Guido Raimondi,

Paulo Pinto de Albuquerque,

Helen Keller, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

...

Having deliberated in private on 14 February 2012,

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

THE FACTS

1. The applicant, Mr Mario Gagliano Giorgi, is an Italian national who was born in 1949 and lives in Milan. The application was lodged with the Court on 31 May 2007. The applicant was represented before the Court by Mr B. Nascimbene and Ms M.S. Mori, lawyers practising in Milan. The Italian Government (“the Government”) were represented by their Agent, Ms E. Spatafora, and their co-Agent, Mr N. Lettieri.

I. THE CIRCUMSTANCES OF THE CASE

2. The facts of the case, as set out by the parties, may be summarised as follows.

A. The main proceedings

3. The applicant was an inspector with the Immigration Bureau of the Milan Police Authority (*Questura*).

4. By a decree of 5 September 1988, served the following day, the Milan District Court public prosecutor’s office informed the applicant that proceedings had been instituted against him for extortion (Articles 317 and 81 of the Criminal Code) and ordered searches of the applicant’s house, car and office, which were carried out on 6 September 1988.

5. On 9 September 1988 the applicant’s computer was seized.

6. On 20 March 1989 the investigating judge at the Milan District Court ordered new searches, which were carried out the following day. Also on 20 March 1989, the judge issued a warrant for the applicant’s arrest on

charges of extortion (Articles 317 and 81 of the Criminal Code) and forgery (Article 479 of the same Code). The applicant was accused of having forced or pressured aliens in need of residence papers to pay him sums of money in order to obtain their papers from the Immigration Bureau, and of having altered the record of statements by a foreign national who had denounced this practice. The judge also ordered the arrest of six other people implicated in the same dealings.

7. On 21 March 1989 the Prefect (*Questore*) of Milan suspended the applicant from duty.

...

11. On 21 June 1989, in response to the applicant's third request, the judge ordered his release on the ground that the prosecutor's office had collected enough evidence so that there was no longer any risk of his concealing evidence.

12. On 25 January 1990 the judge ordered that the applicant be committed for trial before the Milan District Court (RG no. 185/90). Seven other people were also committed for trial.

13. Six hearings were held between 8 and 23 May 1990, at which the facts were examined and statements heard. In a judgment of 25 May 1990, deposited with the registry on 22 June 1990, the court found the applicant guilty of extortion and forgery, sentenced him to four years and six months' imprisonment and banned him from public office for life.

14. On 26 May 1990 the applicant challenged that judgment before the Milan Court of Appeal (RG no. 4630/90), calling for a new investigation and hearings, his acquittal or the reclassification of the offence as bribery.

15. On 5 July 1990, before the Monza District Court, the applicant elected the municipality of San Zenone al Lambro (Milan), care of Ms V.S., as his address for service in the proceedings before the Milan Court of Appeal.

...

18. In a judgment of 29 November 1993, deposited with the registry on 22 December 1993, the Court of Appeal upheld the applicant's conviction on some of the extortion charges against him and reduced his total sentence to three years and eight months for extortion and forgery.

19. On 24 December 1993 the applicant appealed on points of law, requesting as his primary submission that the judgment of the Court of Appeal be set aside because the summons to a hearing on 18 May 1993 had been served on him at his lawyer's address and not the address he had elected on 5 July 1990. In the alternative, he again requested the reclassification of the offences as bribery.

20. In a judgment of 29 September 1994, deposited with the registry on 1 December 1994, the Court of Cassation set aside the Court of Appeal's judgment and referred the case back to another section of that court, *inter alia*, because the summons had been served at the wrong address.

21. In the meantime, on 10 March 1994 the *Questore* of Milan reversed the decision to suspend the applicant from duty. The applicant was transferred to the *Questura* in Turin.

22. The hearing of the parties' submissions before the Milan Court of Appeal (RG no. 2637/94) was scheduled for 29 January 1996. On an unspecified date the Court of Appeal decided to try the applicant *in absentia*.

23. In a judgment of 1 March 1996, deposited with the registry on 30 April 1996, the Court of Appeal, after it had reclassified the charges as bribery, declared the prosecution time-barred. It sentenced the applicant to one year's imprisonment for forgery, suspended the sentence and debarred him from public office for one year as an ancillary penalty.

24. On an unspecified date before July 1996, the applicant lodged a new appeal on points of law. He pointed out that in serving the summons at his elected address, care of Ms V.S., the registry of the court had wrongly addressed the registered letter to Ms V.S. and not to the applicant.

25. In a judgment of 7 October 1997, deposited with the registry on 18 October 1997, the Court of Cassation allowed the applicant's appeal and sent the case back to another section of the Court of Appeal.

26. On an unspecified date the registry of the Court of Appeal served a summons to attend a hearing on 26 March 1998 (RG no. 4288/97) on one of the applicant's lawyers.

27. On that same date the Court of Appeal declared the summons null and void and ordered the police to serve a summons to a hearing on 11 June 1998 at the address of Ms V.S. and at the *Questura* in Turin, where the applicant had started to work in the meantime.

28. Following the hearing on 11 June 1998, in a judgment delivered that same day and deposited with the registry on 24 June 1998, the Court of Appeal declared the bribery charge time-barred and upheld the applicant's one-year suspended prison sentence for forgery and, as an ancillary penalty, debarred him from public office for one year.

29. On 2 October 1998 the applicant again appealed on points of law. He alleged that the summons to the hearing of 11 June 1998, served care of Ms V.S., had not correctly indicated the competent judicial authority, and that the summons served at the *Questura* where he worked was not valid because it had been given to his hierarchical superior.

30. In a judgment of 14 April 1999, deposited with the registry on 29 April 1999, the Court of Cassation dismissed the applicant's appeal on the ground that, according to that court's case-law, when a summons was served on the addressee's hierarchical superior, it was assumed that the addressee had been notified and that the summons was therefore valid.

B. The first application to the Court

31. On 12 October 1999 the applicant lodged application no. 52228/99 with the Court, concerning the fairness of the criminal proceedings against him.

32. On 8 November 2002 the Court declared the application manifestly ill-founded, in conformity with Article 28 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”).

C. The “Pinto” proceedings

33. On 16 October 2001 the applicant applied to the Brescia Court of Appeal under the “Pinto Act”, claiming 60,000,000 Italian lira (30,987 euros (EUR)) for the pecuniary and non-pecuniary damage allegedly sustained because of the length of the principal proceedings.

34. In a decision deposited on 21 February 2002, the Court of Appeal found that there had been a breach of Article 6 § 1 of the Convention only in respect of the period from the judgment of the Milan District Court (22 June 1990) to the delivery of the first judgment on appeal (29 November 1993). It considered, in view of the number of courts that had examined the case, that there had been no undue delays in the other phases of the proceedings. It awarded no compensation, considering that the applicant had not demonstrated that he had suffered any pecuniary or non-pecuniary damage and that, in any event, having been convicted at the end of the main proceedings, he could not have sustained any non-pecuniary damage related to their duration.

35. On 24 April 2002 the applicant appealed on points of law. In a judgment deposited on 24 October 2003, the Court of Cassation quashed the impugned decision, holding that the unfavourable outcome of the proceedings did not, in itself, preclude the existence of non-pecuniary damage related to their duration, and also that an allegation of damage caused as a result of the excessive length of proceedings had to be substantiated. The case was remitted to the Brescia Court of Appeal.

36. On 20 April 2004 the applicant applied to that court, arguing, *inter alia*, that subsequent to the judgment of 24 October 2003 the Plenary Court of Cassation had delivered four judgments (nos. 1338, 1339, 1340 and 1341 of 2004) ruling that it was not necessary to demonstrate the existence of non-pecuniary damage.

37. In a decision of 7 July 2004, deposited on 21 July 2004, the Court of Appeal rejected the appeal, on the grounds that the principles arising from the judgments of the Plenary Court of Cassation were not directly applicable in retrial proceedings and that the applicant had not substantiated his claim of non-pecuniary damage as he should have done. It also found that it had

been in his interest to prolong the criminal proceedings so that the offences with which he was charged would become time-barred.

38. On 15 November 2004 the applicant appealed on points of law. In a judgment deposited on 6 December 2006, the Court of Cassation dismissed the appeal and ordered the applicant to pay EUR 3,000 in costs and expenses.

...

THE LAW

I. COMPLAINTS UNDER ARTICLE 6 § 1 OF THE CONVENTION

...

A. The duration of the main proceedings and the lack of redress through the “Pinto” proceedings

50. The Court notes that the applicant complained of a violation of Article 6 of the Convention because he had received no compensation for proceedings against him that had lasted ten years and seven months for three levels of jurisdiction.

Lack of a significant disadvantage

51. In their observations of 20 May 2010, the Government argued that the applicant had suffered no significant disadvantage. They referred to the text of Article 35 § 3 (b) of the Convention, as amended by Protocol No. 14, according to which the Court can declare an application inadmissible if it considers that “the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal”.

52. The Government affirmed, in particular, that the prolongation of the proceedings in question had enabled the applicant to have his sentence reduced because the bribery charge had been declared time-barred. They further submitted that the applicant had obstructed the proceedings so that the charges against him would become time-barred.

53. The applicant rejected the Government’s arguments concerning his obstructive behaviour and denied having reaped any benefit from the application of the statute of limitations. He argued, in particular, that as the Appeal Court judgment of 1 March 1996 had already suspended his

sentence, the fact that the prosecution had been declared time-barred had not substantially affected his sentence.

54. The Court points out that the purpose of the new “significant disadvantage” admissibility criterion is to enable more rapid disposal of unmeritorious cases and thus to allow it to concentrate on its central mission of providing legal protection of the rights guaranteed by the Convention and its Protocols (see *Stefanescu v. Romania* (dec.), no. 11774/04, § 35, 12 April 2011).

55. Inspired by the general principle *de minimis non curat praetor*, the new criterion hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court (see *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010). The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case (see *Korolev*, cited above, and, *mutatis mutandis*, *Soering v. the United Kingdom*, 7 July 1989, § 100, Series A no. 161). The severity of a violation should be assessed taking account of both the applicant’s subjective perceptions and what is objectively at stake in a particular case.

56. In the light of the criteria established in its case-law, the Court considers that, in ascertaining whether the violation of a right attains the minimum level of severity, the following factors, *inter alia*, should be taken into account: the nature of the right allegedly violated, the seriousness of the impact of the alleged violation on the exercise of a right and/or the possible effects of the violation on the applicant’s personal situation (see *Giusti v. Italy*, no. 13175/03, § 34, 18 October 2011).

57. In the present case the Court notes that, because of the duration of the proceedings in question, on 11 June 1998 the Court of Appeal declared the charge of bribery to be time-barred. This evidently led to a reduction in the applicant’s sentence because, of the two offences with which he was charged, that was the one that carried the harsher penalty, even though the material before the Court does not indicate the exact extent of that reduction or clarify whether there was ultimately any connection between the reduction and the violation of the “reasonable time” requirement. The Court further observes that the applicant decided not to waive the time bar, which he was entitled to do under Italian law (see *Le droit et la pratique internes pertinents*, paragraph 42 [see full text of judgment, available in French only, in Hudoc]). In those circumstances, the Court considers that the reduction of his sentence at least compensated for or significantly reduced the damage normally entailed by the excessive length of criminal proceedings. Furthermore, the Court fails to see the relevance of the applicant’s observations concerning the fact that the judgment of 1 March 1996 had given him a suspended sentence (see paragraph 23 above). It notes in this regard that in the same judgment the Milan Court of Appeal had already declared the bribery charge time-barred.

58. The Court accordingly considers that the applicant has not suffered a “significant disadvantage” in respect of his right to a hearing within a reasonable time.

59. As to whether respect for the human rights safeguarded by the Convention and its Protocols requires the examination of the merits of the application, the Court reiterates that this notion refers back to the conditions already defined for the application of Articles 37 § 1 and 38 § 1 of the Convention (in its pre-Protocol No. 14 version). The Convention institutions have consistently interpreted these provisions as requiring the continued examination of a case, even where a friendly settlement has been reached or there are grounds for striking the application out of the list. It has also been found, however, that no such examination is required when there is clear and very extensive case-law on the Convention issue concerned in the case before the Court (see, amongst other authorities, *Van Houten v. the Netherlands* (striking out), no. 25149/03, ECHR 2005-IX, and *Kavak v. Turkey* (dec.), nos. 34719/04 and 37472/05, 19 May 2009).

60. In the instant case the Court considers that further examination of the complaint is thus not justified by any imperatives of European public order, of which the Convention and Protocols are instruments.

61. The complaint raises the question of the reasonable length of criminal proceedings, and in particular the length of the main proceedings in the context of the remedy introduced by the “Pinto Act”, on which the Court has abundant case-law (see, among other authorities, *Cocchiarella v. Italy* [GC], no. 64886/01, ECHR 2006-V; *Simaldone v. Italy*, no. 22644/03, 31 March 2009; and *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV).

62. In such conditions the Court considers that respect for human rights does not require the continued examination of this complaint.

63. Lastly, as regards the third condition for admissibility under the new criterion, namely that no application may be rejected which has not been “duly considered by a domestic tribunal”, the Court reiterates that its purpose is to ensure that every case receives a judicial examination whether at the national level or at the European level. The clause is also consonant with the principle of subsidiarity, as reflected notably in Article 13 of the Convention, which requires that an effective remedy against violations be available at the national level (see *Korolev*, cited above). Together with the previous safeguard clause, it guarantees that the Court will examine serious questions affecting the application or interpretation of the Convention and its Protocols or important questions concerning national law (see the explanatory report to Protocol No. 14, § 83).

64. In the present case the Court notes that the question of the length of the criminal proceedings was examined on two occasions by the competent courts (Court of Appeal and Court of Cassation) for the purposes of the “Pinto” legislation, after the applicant had submitted to the latter court his

grounds of appeal against the decision by the former not to award him compensation.

65. In those circumstances the Court deems that the case was duly considered by a domestic tribunal and no important questions affecting the application or interpretation of the Convention or concerning national law were left unanswered.

66. Having regard to the foregoing and to the conditions set forth in Article 35 § 3 (b) of the Convention, the Court considers that this complaint must be declared inadmissible pursuant to Article 35 §§ 3 (b) and 4 of the Convention.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint regarding the excessive length of the “Pinto” proceedings admissible and the remainder of the application inadmissible;

...

Done in French, and notified in writing on 6 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President