

CASE OF CESARINI v. ITALY

In the case of Cesarini v. Italy*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. Bernhardt, President,
Mr F. Gölcüklü,
Mr C. Russo,
Mr A. Spielmann,
Mrs E. Palm,
Mr J.M. Morenilla,
Sir John Freeland,
Mr A.B. Baka,
Mr M.A. Lopes Rocha,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 25 June and 22 September 1992,

Delivers the following judgment, which was adopted on the last-mentioned date:

Notes by the Registrar

* The case is numbered 77/1991/329/402. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 13 September 1991, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 11892/85) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Franco Cesarini, on 11 September 1985.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr C. Russo, the elected judge of Italian nationality

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(Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 28 September 1991, in the presence of the Registrar, Mr J. Cremona, the Vice-President of the Court, drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr A. Spielmann, Mr N. Valticos, Mrs E. Palm, Mr J.M. Morenilla, Mr A.B. Baka and Mr M.A Lopes Rocha (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr R. Bernhardt, substitute judge, replaced Mr Valticos, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Italian Government ("the Government"), the Delegate of the Commission and the lawyer for the applicant on the organisation of the procedure (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 12 March 1992. In a letter received on 16 April the Secretary to the Commission informed him that the Delegate would submit his observations at the hearing.

5. Also on 16 April the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. On 29 May the Government filed their observations on the claims for just satisfaction (Article 50) (art. 50) which the applicant had communicated to the Registrar on 27 February.

7. In accordance with the decision of the President, who had given the applicant leave to use the Italian language (Rule 27 para. 3), the hearing took place in public in the Human Rights Building, Strasbourg, on 22 June 1992. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr G. Raimondi, magistrato, on secondment to the
Diplomatic Legal Service, Ministry
of Foreign Affairs, Co-Agent,
Mr G. Manzo,
Mrs A. Passannanti, both magistrati, on secondment
to the Ministry of Justice, Counsel;

(b) for the Commission

Mr J.A. Frowein, Delegate;

(c) for the applicant

Mr M. de Stefano, avvocato, Counsel.

The Court heard addresses and statements by Mr Raimondi and Mr Manzo for the Government, Mr Frowein for the Commission and Mr de Stefano for the applicant.

8. As Mr Ryssdal was unable to attend the final deliberations on 22 September 1992, his place as President of the Chamber was taken by Mr Bernhardt, the Vice-President of the Court (Rule 21 para. 5, second sub-paragraph, and see paragraph 3 above in fine); Sir John Freeland, substitute judge, replaced Mr Ryssdal as a member of the Chamber (Rules 22 para. 1 and 24 para. 1).

AS TO THE FACTS

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9. Mr Franco Cesarini resides in Rome. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (see paragraphs 15-21 of its report):

"15. On 10 September 1982 the applicant instituted proceedings against his employer, company O., before the Rome magistrate's court (pretore) seeking a ruling that his lay-off on 14 June 1982 had been unlawful and that he was entitled to payment of his wages as from that date.

16. The investigative stage of the proceedings began at a hearing on 2 March 1983. The following hearing, originally due to be held on 18 May 1983, was adjourned by the court until 10 June 1983. A third hearing took place on 13 October 1983.

17. On 9 February 1984 the magistrate's court dismissed the applicant's suit. The text of the judgment with the reasons therefor was filed with the registry on 5 April 1984.

18. On 29 March 1985 the applicant, who had been dismissed in the intervening period, appealed against this judgment ...

19. On 4 April 1985 the President of the Rome District Court arranged for the hearing before that court to take place on 18 November 1986; at this hearing the court found against the applicant. The text of the judgment was filed with the registry on 21 April 1987.

20. On 25 March 1988 the applicant gave notice of an appeal to the Court of Cassation ... The appeal was lodged with the registry of the Court of Cassation on 12 April 1988. The hearing before that court was arranged for 22 February 1989.

21. On 19 January 1989 the applicant and company O. reached a friendly settlement. On 7 February 1989, as a result of this settlement, the applicant withdrew his appeal. On 22 February 1989 the Court of Cassation noted the applicant's withdrawal of his action and closed the proceedings."

10. According to the information supplied to the Court by the Government, Mr Cesarini had requested the Rome magistrate's court as early as 10 June 1982, as an emergency measure (provvedimento d'urgenza, Article 700 of the Code of Civil Procedure), to order company O. to pay him the salary due to him from 14 June 1982 to the date of judgment.

11. The relevant provisions of the Code of Civil Procedure provide for two periods for bringing appeals. The first, generally known to lawyers as the "short" period, is normally thirty days from notification of the decision of the court of first instance (Article 434), notification always taking place on the initiative of one of the parties (Article 285). In default of notification, an appeal may be brought within a different period, known as the "long" period, which lasts for one year from publication of the contested decision by filing with the registry of the court of first instance (Articles 327 and 430).

Appeals to the Court of Cassation are subject to similar rules, except that the "short" period is sixty days.

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In employment cases these periods are not suspended during the judicial vacations.

PROCEEDINGS BEFORE THE COMMISSION

12. The applicant applied to the Commission on 11 September 1985. Relying on Article 6 para. 1 (art. 6-1) of the Convention, he complained of the length of the civil proceedings brought by him.

13. The Commission declared the application (no. 11892/85) admissible on 11 May 1990. In its report of 10 July 1991 (made under Article 31) (art. 31), it expressed the opinion by fourteen votes to five that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion and of the two dissenting opinions contained in the report is reproduced as an annex to this judgment*.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 245-B of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

GOVERNMENT'S FINAL SUBMISSIONS TO THE COURT

14. At the hearing the Government asked the Court to hold that there had not been a violation of the Convention in the case.

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 6 para. 1 (art. 6-1)

15. The applicant maintained that his civil action had not been examined within the "reasonable time" laid down in Article 6 para. 1 (art. 6-1) of the Convention, which states that:

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

The Government rejected this argument, but the Commission accepted it.

16. The period to be taken into consideration started not on 10 September 1982, when proceedings were instituted against company O. (see paragraph 9 above, at no. 15), but on 10 June of that year, when the applicant requested the Rome magistrate's court to adopt an emergency measure (see paragraph 10 above). It ended on 22 February 1989, when the Court of Cassation noted that the applicant had withdrawn the action and closed the proceedings (see paragraph 9 above, at no. 21). It thus lasted for more than six years and eight months.

17. The reasonableness of the length of proceedings is to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment.

18. The Government criticised the applicant for having remained inactive for a total of over two years and for not at any stage having asked for his case to be dealt with more rapidly.

19. Mr Cesarini acknowledged that he had not appealed to the

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District Court and the Court of Cassation until near the end of the "long" period (see paragraph 9 above, at nos. 17-20, and paragraph 11). He explained this by reference to his attempts to obtain a friendly settlement, which had been reached only on 19 January 1989 (see paragraph 9 above, at no. 21). He argued that the judicial authorities bore the entire responsibility for the "reasonable time" being exceeded, especially as the law laid down short time-limits for employment cases.

20. The Court, in agreement with the Commission, finds that there were several periods of inactivity: the magistrate's court waited seventeen months before taking a decision and the Rome District Court waited twenty months before examining Mr Cesarini's appeal.

Nevertheless, having regard to the applicant's attitude, to the fact that the case came before three different courts and to the friendly settlement, the delays that occurred do not appear substantial enough for the total length of the proceedings to be able to be regarded as excessive.

21. There has therefore been no breach of Article 6 para. 1 (art. 6-1).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no breach of Article 6 para. 1 (art. 6-1).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 12 October 1992.

Signed: For the President
Alphonse SPIELMANN
Judge

Signed: Marc-André EISEN
Registrar