FIRST SECTION

CASE OF BERTAGNA v. ITALY

(Application no. 20308/03)

JUDGMENT

STRASBOURG

12 January 2023

*This judgment is final but it may be subject to editorial revision.*

In the case of Bertagna v. Italy,

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

 Krzysztof Wojtyczek*, President*,
 Ivana Jelić,
 Erik Wennerström*, judges*,

and Viktoriya Maradudina, *Acting* *Deputy Section Registrar,*

Having deliberated in private on 8 December 2022,

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

1. PROCEDURE

1.  The case originated in an application against Italy lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 23 May 2003.

2.  The applicant was represented by Mr C. Defilippi and Ms F. Anselmo, lawyers practising in La Spezia.

3.  The Italian Government (“the Government”) were given notice of the application.

1. THE FACTS

4.  The applicant’s details and information relevant to the application are set out in the appended table.

5.  The applicant complained of the excessive length of civil proceedings. He also raised another complaint under the provisions of the Convention.

1. THE LAW
	1. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

6.  The applicant complained principally that the length of the civil proceedings in question had been incompatible with the “reasonable time” requirement. He relied on 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 ...”

* + 1. Admissibility

7.  The Government submitted that the applicant had not correctly exhausted the available remedies *via* the “Pinto” proceedings, and that he had failed to prove the non-pecuniary damage stemming from the excessive length of the main proceedings.

8.  The Court observes that it has previously confirmed a strong but rebuttable presumption that excessively long proceedings will occasion non- pecuniary damage. In some cases, the length of proceedings may result in only minimal non-pecuniary damage or no non-pecuniary damage at all. The domestic courts then have to justify their decision by giving sufficient reasons (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 204, ECHR 2006‑V).

9.  The Court notes that before the “Pinto” courts the applicant claimed non-pecuniary damage on account of the excessive length of the main proceedings. Therefore, the Court dismisses the Government’s objection in this regard.

10.  The Government also submitted that the applicant was no longer a “victim” of a violation of Article 6 § 1 in light of the “Pinto” courts’ judgments on his claim.

11.  The Court observes that the applicant’s victim status depends on whether the redress afforded to him at the domestic level was adequate and sufficient having regard to Article 41 of the Convention.

12.  The Court notes that in the present case the “Pinto” courts did not find a violation of the relevant provisions of the Convention and that the applicant was not awarded any redress at the domestic level.

13.  Accordingly, the applicant can still claim to be a victim of a breach of the “reasonable time” requirement, in the light of the principles established under the Court’s case law (see, *a contrario*, *Garino v. Italy* (dec.), nos. 16605/03, 16641/03 and 16644/03, 18 May 2006, and, *mutatis mutandis*, *Scordino*, cited above, §§ 178-215, and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-V). It follows that the Government’s objection in this regard should also be dismissed.

14.  The Court further finds that the applicant’s complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other ground. It must therefore be declared admissible.

* + 1. Merits

15.  The Government submitted that the applicant’s dilatory conduct had substantially contributed to the prolongation of the proceedings. In particular, he had failed to act in a timely manner on several occasions, causing the stay of the proceedings for at least one year and four months.

16.  The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

17.  In the leading case of *Cocchiarella*, cited above, the Court has already found a violation of Article 6 § 1 of the Convention in respect of excessively lengthy proceedings.

18.  Having examined all the material submitted to it, the Court considers that neither the applicant’s conduct nor any other fact or argument put forward by the Government can justify the length of the proceedings at the national level (which lasted more than nine years in total). It follows that the Government’s objection in this respect should be dismissed.

19.  Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

20.  Accordingly, there has been a violation of Article 6 § 1 of the Convention.

* 1. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21.  The applicant further complained that the order to pay the costs of the “Pinto” proceedings had infringed his right of access to a court, as guaranteed by Article 6 § 1.

22.  The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

23.  Having regard to its finding on the excessive length of the proceedings (see paragraph 20 above) and to its ruling under Article 41 on costs and expenses (see paragraph 25 below and appended table), the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 6 of the Convention in relation to the applicant’s right of access to a court.

* 1. 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.”

25.  Regard being had to the documents in its possession and to its case‑law (see, in particular, *Cocchiarella,* cited above), the Court considers it reasonable to award the sum indicated in the appended table and dismisses the remainder of the applicant’s claims for just satisfaction.

1. FOR THESE REASONS, THE COURT, UNANIMOUSLY,
2. *Declares* the application admissible;
3. *Holds* that this application discloses a breach of Article 6 § 1 of the Convention concerning the excessive length of civil proceedings;
4. *Holds* that it is not necessary to examine separately the applicant’s complaint under Article 6 in relation to the right of access to a court;
5. *Holds*
	1. that the respondent State is to pay the applicant, within three months, the amount indicated in the appended table;
	2. 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.
6. *Dismisses* the remainder of the applicant’s claims for just satisfaction.

Done in English, and notified in writing on 12 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Viktoriya Maradudina Krzysztof Wojtyczek

 Acting Deputy Registrar President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention

(excessive length of civil proceedings)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Application no.Date of introduction | Applicant’s nameYear of birth | Start of proceedings | End of proceedings | Total lengthLevels of jurisdiction | Domestic court / file numberDomestic award(in euros) | Amount awarded for non-pecuniary damage per applicant(in euros)[[1]](#endnote-1) | Amount awarded for costs and expenses per application(in euros)[[2]](#endnote-2) |
| 20308/0323/05/2003 | **Davide BERTAGNA**1967  | 01/02/1992 | 07/05/2001 | 9 years and 3 months and7 days2 levels of jurisdiction | Court of Cassation, R.G. 14174/02None | 2,900 | 4,132 |

1. Plus any tax that may be chargeable to the applicant. [↑](#endnote-ref-1)
2. Plus any tax that may be chargeable to the applicant. [↑](#endnote-ref-2)