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The European Court of Human Rights condemns Italy

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The Tribunale di Cosenza ruled on 15 November 1939 that a declaration of Mrs M.P. was void according to which she had waived the right to inherit her husband, Baron M., in favour of 12 other of his heirs in return for a sum of money, since Mrs M.P., according to the court, had been forced to do this by the heirs. Mrs M.P. sued the heirs on 21 August 1947 before the Tribunale di Cosenza and demanded division of the inheritance in accordance with the testament. Proceedings began on 24 June 1948.

Innumerable oral proceedings and adjournments followed due to various reasons listed here below: replacement of an expert, adjournment at the request of the court, adjournments by the sole judge due to a division of work among the court's various judges, failure of court appointed experts to appear, swearing in of experts, failure to submit expert opinions, adjournments in order to provide the litigants with the opportunity of studying the expert opinions, replacement of the judge, failure to serve documents on various heirs, adjournment in order to allow the parties to submit their final briefs, the death of several lawyers, another replacement of the judge, appointment of authorised counsel for the party entitled to legal aid. On 17 May 1999, Tribunale di Cosenza finally sentenced the defendants to pay a certain sum of money to the heirs of Mrs E.P. who had, in turn, become heir to the original plaintiff, Mrs M.P.

The case just cited has been brought before the European Court of Human Rights in Strasbourg by one of the heirs, Mr Aldo Tripodi and was decided on 12 October 2000 by the court's fourth division. The court in this case unanimously found a violation of Article 6(1) of the European Convention on Human Rights (ECHR) according to which everybody has a right to "having disputes in regard to their civil law claims and obligations (...) dealt with by a (...) court (...) within a reasonable amount of time." The court then sentenced Italy to pay ITL 150,000,000 to the plaintiff for intangible damages and litigation fees and to pay interest at 2.5% from the date when the judgment went into force.

3,652 cases against Italy in European Court of Human Rights in 1999, including 44 condemnations (out of a total of 120 judgments in the same year): Italy holds the unenviable record of being at the top of the charts for "bad conditions" that are every day being subjected to litigation at the European Court of Human Rights, permanent since 1998. The court adjudicates lawsuits by citizens claiming violation of their guaranteed basic rights adopted on 4 November 1950 and since then ratified by 41 States.

After Italy (3,652 complaints, of which 868 registered)

comes Poland (691 registered cases out of a total of 2,898), France (868 of 2,586), Russia (972 of 1,787), Germany (534 of 1,596) and Turkey (518 of 655).¹

As mentioned above, Italy with 44 of a total of 120 condemnations in 1999, that makes 36.7%, was the most frequently condemned country, followed by Turkey with 18 condemnations (15%), France with 16 (13.3%), the United Kingdom with 12 (10%) and Portugal with 8 (6.7%); at the lower rungs there follow Greece (4.2%), Austria (2.5%), Malta, Norway and Romania (1.7% each).²

Still, the cases in which condemnations to damage amounts range between EUR 8,000 and EUR 15,000 are different from each other.

While the overwhelming majority of Italy's condemnations are due to abnormal litigation duration, in particular in civil law cases (Article 6(1) of ECHR) where the duration of the cases brought before the court ranges from five to ten and even 15 years, Turkey is being condemned for torture, for murders in Kurdistan, for serious violations of freedom of expression and for arbitrary dissolution of political parties; France, on the other hand, is largely being condemned for excessive remand detention periods, primarily in regard to Algerian and Tunisian immigrants - and for the excessive duration of criminal cases.

The number of cases brought against Italy (3,652) indicates that the situation will deteriorate markedly in the coming years.

On 25 January 2000, on a single day and as unbelievable as it sounds, 29 judgments were read out against Italy, 19 others followed on 8 February 2000 and an additional 10 judgments came on 15 February 2000.

From the beginning of the year 2000 up through the end of August, 250 of a total of 400 cases before the Court concerned Italy.³ But the problems facing Italy do not stop there. In its annual report on the condition of the judicial system, the Advocate General at the Cassation Court, Dr Antonio La Torre, mentions that another organ of the Council of Europe, namely the Committee of Ministers had, in the exercise of its official control functions over work of judicial organs operating in the field of human rights protection had gone into action with three resolutions regarding Italy.⁴

With the first resolution (No. 82 for 1995), the Committee

¹ Il Sole 24 Ore, 25 January 2000.

² Panorama, 3 February 2000.

³ Il Sole 24 Ore, *supra* note 1.

⁴ Annual Report of the Advocate General, published in: *Diritto & Giustizia*, No. 2, 22 January 2000, at 6 et seq.

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of Ministers studied legislative measures adopted by the Italian State after 1990 in regard to violations for which Italy was being pilloried. With the second resolution (No. 336 of 11 July 1997) it emphasised that the violations of Article 6(1) of ECHR had not declined despite the measures adopted by the Italian government. The Committee decided “to resume studying reforms needed for a solution to the problems of the length of civil law actions” and thus “to keep the corresponding cases on the agenda until reforms are completed.”

The third resolution (No. 477 of 15 July 1999): a) noted detailed information “on the effects of additional measures and on the progress of measures implemented to solve the problem” (establishing the office of a justice of the peace, programme for eliminating the backlog by setting up “ad hoc chambers” at regional courts, appointment of trial level judges, laws authorising the issuance of decrees in regard to provincial courts for urban areas); b) provided a (positive) assessment of rationalisation plans announced by the Italian government; c) simultaneously included a reminder of the “important problems remaining to be solved” and urging the Italian authorities “to continue with the previously undertaken efforts;” and d) ended by saying that it (the Committee) decided “to reopen the matter in one year at the earliest in order to determine whether the measures announced are really suitable for avoiding new violations of ECHR.” At the same time, the resolution stipulated that it would for the time being not take up “questions of granting and paying equity compensation which can be done in special matters.”

Highly topical is, finally, a new resolution of the Committee of Ministers dated 26 October 2000 in regard to Italy and which, judging from press reports, takes a more moderate tone than the previous resolutions, but makes it clear to Italy that it has thus “not completely heeded the call to adjust to the practice of the European Court of Human Rights about the protracted duration of court proceedings.” Here, the Committee of Ministers emphasised that the problem was “important and quite topical,” that it still constituted a “danger”, in particular for “respect for the rule of law.” In the same resolution, the “undoubted efforts” undertaken by the Italian State and the “quite significant commitments” entered into by the “highest authorities of Italy” were noted.

In waiting for a “turnaround in this tendency,” Italy to a certain extent remains a “specially monitored party” which “at least once per year” must be subjected to an “attentive assessment”.⁵

Italy is in any case under observation to determine what the effects of the measures taken by the Italian government mentioned above have been. Should the latter not have any effects in the short run, the EU Council of Ministers would not be prevented (as it were) from taking more drastic initiatives. That could even lead to Italy (a founding member of the Council of Europe) being suspended from its “right to vote”;

in that way, Italy would practically be excluded from European consensus as has already been mentioned – if only to ward off such a fate – by the Advocate General in the report cited above. This applies most especially to Article 6 of the Amsterdam Treaty according to which “every Member State” is obligated “in its legal system to respect” the principle of “due process, including in the sense of an appropriate duration, and that this is not the case, in the light of the practice of the European Court of Human Rights, if it lasts for more than six years.”⁶

At this juncture, one will have to wait and see which effects (and in what context of time) the Italian authorities’ measures will have and what additional measures can still be taken in order to reduce the enormous quantity of, unbelievable as it is, 3,519,135 currently pending cases⁷ and especially when ECHR and EU organs are losing their patience regarding Italy’s violations. Additional possible measures currently being discussed in various quarters (Consiglio Superiore della Magistratura or CSM, the Italian cabinet, the Italian Ministry of Justice) range from extra-budgetary hiring of at least 300 career judges to having as many as 1000 additional new judges installed; this solution requires the adoption of a special law as well as preparation of technical administrative measures such as broadly based recruitment of secretariat staff for the relevant offices (documenting officers, secretaries, etc) and a considerable and especially well-planned increase in resources invested in “Planet Justice”. These measures which are patently necessary and have long been the subject of discussion can hardly be implemented in a short period of time: the causes of this are both the impending end of the current legislative period (parliamentary elections are expected during the first half of this year) as well as the resistance of more than just a few sections of public opinion to any changes, particularly from the more conservative section of the various “corporate associations” (judges and prosecutors, the legal profession, in the broadest sense the public sense), who obviously fear that a “new wind” could in some way or other sweep away their privileges, big or small. These are the coordinates within which the Italian judicial administration moves and it is therefore easy to predict that the pressure being applied to Italy by Council of Europe organs will persist for some time; this constitutes, between condemnations and recommendations, perhaps the main incentive for a radical change of the ways and means and (especially) the speed in which the Italian judicial system has been administered for many years now.

⁵ Il Sole Ore, *supra* note 1.

⁶ Cf. the annual report of the Advocate General at the Court of Cassation of 12 January 2000, in: *Diritto & Giustizia*, *ibid.*, at 34.

⁷ *Ibid.*