



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

COURT (CHAMBER)

CASE OF ARTICO v. ITALY

(Application no. 6694/74)

JUDGMENT

STRASBOURG

13 May 1980

since neither the individual applicant nor the Commission has the status of party before the Court (Lawless judgment of 14 November 1960, Series A no. 1, pp. 11, 14 and 15-16; Rule 1 of the Rules of Court).

In the present proceedings, Mr. Artico has provided sufficient prima facie evidence. The documents of which he supplied copies to the Commission included telegrams from the registry of the Court of Cassation and many of the documents had passed through the hands of prison authorities who kept a record thereof in their files (registers of Brindisi, Milan and Venice prisons). The Government cannot therefore simply formulate reservations about these materials. Again, the Court refuses to believe that the administrative or practical difficulties relied on by the Government are insurmountable in a modern society. In addition, the Court recalls that the Contracting States have a duty to co-operate with the Convention institutions in arriving at the truth (above-mentioned judgment of 18 January 1978, p. 60, par. 148 in fine, and p. 65, par. 161 in fine). Accordingly, the Court regards the facts summarised at paragraphs 8 to 15 above as established and will take them as the basis for its examination of the merits of the case.

B. Questions concerning the merits

31. The applicant alleged a violation of Article 6 par. 3 (c) (art. 6-3-c) of the Convention, which reads:

"Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

..."

This contention was unanimously accepted in substance by the Commission but disputed by the Government.

32. Paragraph 3 of Article 6 (art. 6-3) contains an enumeration of specific applications of the general principle stated in paragraph 1 of the Article (art. 6-1). The various rights of which a non-exhaustive list appears in paragraph 3 reflect certain of the aspects of the notion of a fair trial in criminal proceedings (see paragraph 87 of the Commission's report; Deweer judgment of 27 February 1980, Series A no. 35, p. 30, par. 56). When compliance with paragraph 3 is being reviewed, its basic purpose must not be forgotten nor must it be severed from its roots.

33. As the Commission observed in paragraphs 87 to 89 of its report, sub-paragraph (c) (art. 6-3-c) guarantees the right to an adequate defence

either in person or through a lawyer, this right being reinforced by an obligation on the part of the State to provide free legal assistance in certain cases.

Mr. Artico claimed to be the victim of a breach of this obligation. The Government, on the other hand, regarded the obligation as satisfied by the nomination of a lawyer for legal aid purposes, contending that what occurred thereafter was in no way the concern of the Italian Republic. According to them, although Mr. Della Rocca declined to undertake the task entrusted to him on 8 August 1972 by the President of the Second Criminal Section of the Court of Cassation, he continued to the very end and "for all purposes" to be the applicant's lawyer. In the Government's view, Mr. Artico was, in short, complaining of the failure to appoint a substitute but this amounted to claiming a right which was not guaranteed.

The Court recalls that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective; this is particularly so of the rights of the defence in view of the prominent place held in a democratic society by the right to a fair trial, from which they derive (see the Airey judgment of 9 October 1979, Series A no. 32, pp. 12-13, par. 24, and paragraph 32 above). As the Commission's Delegates correctly emphasised, Article 6 par. 3 (c) (art. 6-3-c) speaks of "assistance" and not of "nomination". Again, mere nomination does not ensure effective assistance since the lawyer appointed for legal aid purposes may die, fall seriously ill, be prevented for a protracted period from acting or shirk his duties. If they are notified of the situation, the authorities must either replace him or cause him to fulfil his obligations. Adoption of the Government's restrictive interpretation would lead to results that are unreasonable and incompatible with both the wording of sub-paragraph (c) (art. 6-3-c) and the structure of Article 6 (art. 6) taken as a whole; in many instances free legal assistance might prove to be worthless.

In the present case, Mr. Artico did not have the benefit of Mr. Della Rocca's services at any point of time. From the very outset, the lawyer stated that he was unable to act. He invoked firstly the existence of other commitments and subsequently his state of health (see paragraph 14 above). The Court is not called upon to enquire into the relevance of these explanations. It finds, as did the Commission (see paragraph 98 of the report), that the applicant did not receive effective assistance before the Court of Cassation; as far as he was concerned, the above-mentioned decision of 8 August 1972 remained a dead letter.

34. Sub-paragraph (c) of Article 6 par. 3 (art. 6-3-c) does, nevertheless, make entitlement to the right it sets forth dependent on two conditions. Whilst here there was no argument over the first condition - that the person charged with a criminal offence does not have sufficient means -, the Government denied that the second condition was satisfied: on their view, the "interests of justice" did not require that Mr. Artico be provided with