



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

FIRST SECTION

CASE OF MONTALTO AND OTHERS v. ITALY

(Applications nos. 37301/17 and 3 others – see appended list)

JUDGMENT

STRASBOURG

12 January 2023

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

In the case of Montalto and Others 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:

PROCEDURE

1. The case originated in applications against Italy lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The Italian Government (“the Government”) were given notice of the applications.

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. In respect of application no. 44130/17, the domestic proceedings were started by Mr A. Lorello, the applicant’s husband. On 25 December 1998 Mr Lorello died. On 28 February 2002 the applicant, Ms A. Di Lorenzo, declared her intention to continue the domestic proceedings as heir.

5. In respect of application no. 2524/20, the domestic and the “Pinto” proceedings were started by Mr C. Giustiniani. The “Pinto” proceedings ended on 11 June 2019. Three weeks later Mr Giustiniani died. The application before the Court has been lodged by his heirs in their own name (see appended table).

6. All the applicants complained of the excessive length of civil proceedings. They also raised another complaint under the well-established case-law of the Court concerning the non-enforcement or delayed enforcement of domestic decisions.

THE LAW

I. JOINDER OF THE APPLICATIONS

7. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF CIVIL PROCEEDINGS

8. The applicants complained principally that the length of the civil proceedings in question had been incompatible with the “reasonable time” requirement. They 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 ...”

9. The Government submitted that the applicants were no longer a “victim”, within the meaning of Article 34 of the Convention, of the alleged violations of Article 6 § 1 of the Convention because the amount granted as compensation at the national level was reasonable and in compliance with the relevant legislature’s criteria.

10. In respect of application no. 44130/17, the Government also submitted that the period to be taken into consideration should begin with the applicant’s intervention in the main proceedings as heir.

11. As regards the applicants’ victim status, the Court considers that the just satisfaction awarded to the applicants at the domestic level cannot be considered sufficient in the light of the Court’s case-law (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 205-06 and 214-15, ECHR 2006-V; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 86-98, ECHR 2006-V; *Garino v. Italy* (dec.), no. 16605/03, 16641/03 and 16644/03, 18 May 2006). The applicants can accordingly still claim to be a “victim” of a breach of the “reasonable time” requirement and the Government’s objection should therefore be dismissed (see *Cocchiarella*, cited above, §§ 69-83).

12. As to their second objection in respect of application no. 44130/17, the Court notes that the death of the applicant’s husband had not led to an interruption of the proceedings. The Court refers to its judgment in the leading case *Cocchiarella* (cited above, § 47 and § 113), where it rejected the same objection and clarified that if the applicant has declared his or her intention to continue the main proceedings as heir, he or she can complain of the entire length of the proceedings. Thus, it dismisses the Government’s objection and declares the applications admissible.

13. On the merits, 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

14. In the leading case of *Cocchiarella* (cited above), the Court already found a violation of Article 6 § 1 of the Convention on account of the excessive length of civil proceedings.

15. Turning to the present case, having examined all the material submitted to it, the Court has not found any fact or argument capable of justifying the overall length of the proceedings at the national level. 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.

16. These complaints therefore disclose a breach of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

17. The applicants submitted another complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning non-enforcement or delayed enforcement of “Pinto” domestic decisions (see appended table).

18. The Government submitted that the applicants had failed to exhaust the available domestic remedies.

19. As regards the Government’s objection related to the non-exhaustion of domestic remedies, the Court refers to its judgment in the case of *Gaglione and Others v. Italy* (nos. 45867/07 and 69 others, § 22, 21 December 2010), where it rejected a similar non-exhaustion objection. The Court therefore dismisses the Government’s objection in the present case.

20. The Court further notes that the 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 grounds. It must therefore be declared admissible.

21. Having examined all the material submitted to it, the Court also has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of the complaint. There has accordingly been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement or delayed enforcement of the final domestic decisions in the applicants’ favour (see *Gaglione and Others*, cited above, §§ 40 and 45).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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.”

23. The Court reiterates that a judgment in which it finds a breach of the Convention imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to

restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

24. 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 sums indicated in the appended table.

25. The Court further finds that the respondent State is to enforce the “Pinto” domestic decisions which are still not enforced.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that these applications disclose a breach of Article 6 § 1 of the Convention concerning the excessive length of civil proceedings;
4. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);
5. *Holds* that the respondent State shall ensure, by appropriate means, within three months, the enforcement of the pending domestic decisions referred to in the appended table;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

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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
Acting Deputy Registrar

Krzysztof Wojtyczek
President

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APPENDIX

List of applications raising complaints under Article 6 § 1 of the Convention
(excessive length of civil proceedings)

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Start of proceedings	End of proceedings	Total length Levels of jurisdiction	Domestic court / file number Domestic award (in euros)	Other complaints under well-established case-law	Amount awarded for non-pecuniary damage per applicant/household (in euros) ¹	Amount awarded for costs and expenses per application (in euros) ²
1.	37301/17 10/05/2017	Benedetto MONTALTO 1956	Fundarò Antonina Palermo Germanà Alfredo Palermo	11/10/2004	10/09/2012	7 years and 11 months 2 levels of jurisdiction	Caltanissetta Court of Appeal RG 1334/2012 2,187	Article 6 (1) and Article 1 of Protocol No. 1 - non-enforcement or delayed enforcement of domestic decisions – Judgment of Caltanissetta Court of Appeal of 23/07/2014 (RG 1334/12); start date of the enforcement proceedings on 23/07/2014 and still pending	400	800

¹ Plus any tax that may be chargeable to the applicants.

² Plus any tax that may be chargeable to the applicants.

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No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Start of proceedings	End of proceedings	Total length Levels of jurisdiction	Domestic court / file number Domestic award (in euros)	Other complaints under well-established case-law	Amount awarded for non-pecuniary damage per applicant/household (in euros) ¹	Amount awarded for costs and expenses per application (in euros) ²
2.	44130/17 13/06/2017	Angela DE LORENZO 1935	Fundarò Antonina Palermo Germanà Alfredo Palermo	23/11/1994	05/06/2012	17 years and 6 months and 14 days 2 levels of jurisdiction	Caltanissetta Court of Appeal RG 1311/2012 4,666	Article 6 (1) and Article 1 of Protocol No. 1 - non-enforcement or delayed enforcement of domestic decisions – Judgment of Caltanissetta Court of Appeal of 25/06/2014 (RG 1311/12); start date of the enforcement proceedings on 25/06/2014 – end date 26/05/2017	2,500	800
3.	57740/17 27/07/2017	Teresa LANDINO 1959	Fundarò Antonina Palermo Germanà Alfredo Palermo	10/07/2001	10/01/2014	12 years and 6 months and 1 day 1 level of jurisdiction	Caltanissetta Court of Appeal RG 1339/12 4,000	Article 6 (1) and Article 1 of Protocol No. 1 - non-enforcement or delayed enforcement of domestic decisions – Judgment of Caltanissetta Court of Appeal of 06/03/2014 (RG 1339/2012);	7,000	1,250

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No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Start of proceedings	End of proceedings	Total length Levels of jurisdiction	Domestic court / file number Domestic award (in euros)	Other complaints under well-established case-law	Amount awarded for non-pecuniary damage per applicant/household (in euros) ¹	Amount awarded for costs and expenses per application (in euros) ²
								start date of the enforcement proceedings on 06/03/2014 and still pending		
4.	2524/20 11/12/2019 (5 applicants)	Maurizio VIGNATI 1941 <u>Household</u> Antonio GIUSTINIANI 1971 Giuliana SCARDAZZA 1945 Marco GIUSTINIANI 1973 Luca GIUSTINIANI 1980	Morrone Corrado Rome	09/12/1999	20/12/2011	12 years and 12 days 1 level of jurisdiction	Perugia Court of Appeal RG 2417/2012 4,500	Article 6 (1) and Article 1 of Protocol No. 1 - non-enforcement or delayed enforcement of domestic decisions – start date of the enforcement proceedings on 19/09/2017 and still pending	2,600	250