



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

THIRD SECTION

**CASE OF SANNINO v. ITALY**

*(Application no. 30961/03)*

JUDGMENT

STRASBOURG

27 April 2006

**FINAL**

***13/9/2006***



**In the case of Sannino v. Italy,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Boštjan M. Zupančič, *President*,

John Hedigan,

Lucius Caflisch,

Margarita Tsatsa-Nikolovska,

Vladimiro Zagrebelsky,

Alvina Gyulumyan,

David Thór Björgvinsson, *judges*,

and Vincent Berger, *Section Registrar*,

Having deliberated in private on 30 March 2006,

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

## PROCEDURE

1. The case originated in an application (no. 30961/03) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mr Giuseppe Sannino (“the applicant”), on 19 September 2003.

2. The applicant was represented by Mrs A.G. Lana and Mr A. Saccucci, lawyers practising in Rome. The Italian Government (“the Government”) were represented by their Agent, Mr I.M. Braguglia, and their Deputy co-Agent, Mr N. Lettieri.

3. By a decision of 24 February 2005, the Chamber declared the application partly inadmissible and decided to give notice to the Government of the complaints based on the alleged unfairness of the criminal proceedings and the alleged lack of a right to an appeal. Under the provisions of Article 29 § 3, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Casoria.

### **A. The criminal proceedings brought against the applicant**

5. On 12 December 1992 the applicant and two others, all of whom were charged with fraudulent bankruptcy, were committed for trial in the Naples District Court. After numerous adjournments on account of failure to serve proper notice or lawyers' strikes, a hearing was held on 23 September 1997. At the hearing the lawyer retained by Mr Sannino produced a list of witnesses he wanted to be summoned to appear in court. They were mainly people who would say that the applicant had been less directly involved in the management of X, a commercial company, after February 1989. The president of the court granted the request.

6. At a hearing on 18 November 1997, Mr Sannino was represented by a different lawyer of his choosing, Mr G., whom he had retained on 13 September 1996. Mr G. produced the list of witnesses again. The court again granted leave for the persons named in the list to be summoned. A number of witnesses were examined on 3 November 1998 in the presence of the applicant and Mr G.

7. In a note deposited with the registry of the Naples District Court on 18 January 1999, Mr G. announced that he was withdrawing from the case. He said that the applicant had been informed accordingly by registered letter sent on 18 January 1999. On 19 January 1999 the court assigned the applicant a defence lawyer, Mr B.

8. On 25 January 1999 Mr B. was informed of the date of the next hearing (17 February 1999). The note he received did not, however, mention that he had been officially assigned to represent Mr Sannino. No notification was sent to Mr Sannino.

9. Mr B. did not appear at the hearing on 17 February 1999, but the applicant did. The court ordered Mr B. to be replaced by another official defence lawyer, Mr M., and adjourned the case to 16 March 1999.

10. On that date Mr B. again failed to appear, but the applicant was present. The court ordered Mr B. to be replaced by another official defence lawyer, Mr A. One of the witnesses called by the prosecution was examined by the prosecution's representative and cross-examined by the lawyer of one of the applicant's co-defendants. The court adjourned the proceedings to 5 May 1999 and ordered the other witnesses to be summoned.

11. On that date Mr B. again failed to appear, but the applicant was present. The court ordered Mr B. to be replaced by another official defence lawyer, Mr O. Mr Sannino made a number of spontaneous statements. A witness called by the prosecution was examined. Having regard to the absence of two other prosecution witnesses, the court adjourned its examination of the case to 16 June 1999. The hearing was not held on that date and the proceedings were adjourned on account of the European parliamentary elections.

12. Further hearings were held on 2 November and 17 December 1999 and on 18 January and 29 March 2000, to which the witnesses on the applicant's list were not summoned. Mr B., who had still not appeared, was replaced by a different court-appointed defence lawyer each time.

13. The record of the hearing on 2 November 1999 mentions that the applicant was present, which the applicant himself denies. He states that he attended his trial for the last time on 5 May 1999 and that after the adjournment of 16 June 1999 he was not notified of the date of the next hearing (2 November 1999). A notice of hearing had in fact been issued to a person who did not have authorisation (*persona non abilitata*) to receive notices. The Government produced a note (*relata di notifica*) before the Court, drawn up by a court bailiff, according to which notice of the hearing on 2 November 1999 had been served personally on 23 July 1999 on a person identifying himself as Giuseppe Sannino. The applicant maintains that the signature appearing on the note is not his and that on 23 July 1999 he was not at home, but at the Montepandone Hotel in San Benedetto del Tronto, as had been proved by his lawyer in the appeals lodged after his conviction. Furthermore, he alleges, the indication that the notice of hearing was served on him personally was added by the court bailiff more than five years after the material time, "at the request of the office of the co-Agent at the Permanent Representation of Italy".

14. A final hearing was held on 12 April 2000. Neither the applicant nor Mr B. appeared. Mr B. was replaced by a court-appointed lawyer. Witnesses were examined.

15. In a judgment of 12 April 2000, the text of which was deposited with the court's registry on 19 April 2000, the Naples District Court sentenced the applicant to two years' imprisonment.

16. The applicant was not officially informed that the judgment against him had been deposited with the registry. He submits that, not having been aware of the conviction, he was unable to avail himself of his right to appeal within the statutory thirty-day period.

17. He claims that he did not learn of his conviction – which had become final on 29 May 2000 – until 11 May 2001, when he asked for a copy of his criminal record.

### **B. The applicant's appeals against his conviction**

18. The applicant also learnt that Mr B. had been appointed to represent him, whereupon he contacted him.

19. Through Mr B. the applicant lodged an application on 15 November 2001 for leave to appeal out of time. He claims that the notice of the date of the hearing of 2 November 1999 was void on the ground that the court bailiff's report did not refer to the standing of the person on whom it had been served. Moreover, Mr B.'s appointment was – he alleges – unlawful

because his name did not appear on the list of official defence lawyers. In any event Mr B. had never been informed of his appointment. In the applicant's submission, the time-limit for lodging an appeal had therefore never started running.

20. At the same time, again through Mr B., the applicant appealed against the judgment of 12 April 2000. He sought an acquittal on the merits and requested the investigation to be reopened for the purpose of hearing evidence from the witnesses indicated in the defence's list.

21. By an order of 8 March 2002, the Naples District Court dismissed the application for leave to appeal out of time. It observed that the applicant referred to matters regarding the conduct of the trial at first instance that should have been raised prior to the date on which the judgment of 12 April 2000 had become final. Leave to appeal out of time was granted only where the convicted person proved that he had been prevented by a case of *force majeure* from taking certain steps within the statutory time-limit, and not where he alleged procedural defects. In those conditions it was not necessary to ascertain whether the facts of which the applicant complained were genuine.

22. On 29 March 2002 the applicant lodged an appeal on points of law. He alleged that the Naples District Court had wrongly construed the relevant provisions of domestic law, namely, Articles 175 and 670 of the Code of Criminal Procedure ("the CCP" – see "Relevant domestic law" below). He stated that, through no fault of his own, he had not been aware of the judgment.

23. In a judgment of 4 March 2003, the text of which was deposited with the registry on 26 March 2003, the Court of Cassation declared the appeal inadmissible. It observed that the applicant was complaining of flaws in the appointment of his court-appointed defence counsel and the service of the notice of the date of the hearing of 2 November 1999. Those flaws could have resulted in certain measures being annulled on grounds of procedural errors, but had been cured (*sanate*) when the conviction had become final.

### **C. Execution of the sentence imposed on the applicant**

24. On 29 April 2002 the Naples public prosecutor's office ordered execution of the sentence imposed on the applicant by the judgment of 12 April 2000. Execution was stayed, however.

25. On 11 June 2002 the applicant requested the application of an alternative measure to detention, namely, probation (*affidamento in prova al servizio sociale*). By an order of 28 June 2005, the Naples Post-Sentencing Court granted the applicant's request. On 5 September 2005 the applicant declared that he accepted the obligations stipulated in the probation order, namely, not to leave the district (*comune*) of Casoria without prior authorisation of the judge supervising enforcement of sentences; to devote

himself fully to his work at the M. company; not to leave his house before 8 a.m. and not to return after 8 p.m; not to associate with reoffenders; and to report to the police station at least three times per week.

## II. RELEVANT DOMESTIC LAW

### A. Requests for leave to appeal out of time and objections to execution

26. Article 175 §§ 2 and 3 of the CCP provides for the possibility of applying for leave to appeal out of time. The relevant parts of that provision were worded as follows at the material time:

“In the event of conviction *in absentia* ..., the defendant may request the reopening of the time allowed for appeal against the judgment where he can establish that he had no effective knowledge [*effettiva conoscenza*] [of it] ... [and] on condition that no appeal has been lodged by his lawyer and there has been no negligence on his part or, in the case of a conviction *in absentia* having been served ... on his lawyer ..., that he did not deliberately refuse to take cognisance of the procedural steps.

A request for the reopening of the time allowed for appeal must be lodged within ten days of the date ... on which the defendant learnt [of the judgment], failing which it shall be declared inadmissible.”

27. The validity of a conviction may be contested by means of an objection to execution under Article 670 § 1 of the CCP, the relevant parts of which provide:

“Where the judge supervising enforcement establishes that a judgment is invalid or has not become enforceable, he shall, [after] assessing on the merits [*nel merito*] whether the safeguards in place for a convicted person deemed to be untraceable have been observed, ... suspend its enforcement, ordering, where necessary, that the person be released and that defects in the service of process be remedied. In such cases the time allowed for appealing shall begin to run again.”

### B. Rules on the replacement of a lawyer and the production of evidence

28. Under Article 97 §§ 1, 4, 5 and 6 of the CCP:

“1. A defendant who has not appointed a lawyer of his own choosing or finds himself without one shall be assisted by a court-appointed defence lawyer.

...

4. Where defence counsel’s presence is necessary and [the lawyer] chosen by the defendant or the court-appointed lawyer ... has not been found, has not appeared or has withdrawn from the case, the judge shall appoint as his replacement another

defence lawyer immediately available [*reperibile*], to whom the provisions of Article 102 shall apply [under that provision, the replacement lawyer exercises the rights of the defence counsel and is subject to the same obligations]. ...

5. The court-appointed defence lawyer shall defend his client [*prestare il patrocinio*] and shall not be replaced other than for a legitimate reason [*giustificato motivo*].

6. The court-appointed lawyer shall cease to act if [the defendant] appoints a lawyer of his own choosing.”

29. A defence lawyer who has just been appointed may request an adjournment of the hearing date. Article 108 § 1 of the CCP provides, *inter alia*:

“Where a defence lawyer withdraws from the case, has his appointment revoked or is incompatible or abandons the case, the defendant’s new lawyer or the court-appointed [defence lawyer] can request sufficient time [*congruo*], of no less than seven days, in which to study the file and acquaint himself with the facts of the case.”

30. In accordance with Article 148 § 5 of the CCP, the reading out of decisions to persons present in the courtroom and the information given to them orally by the judge “shall replace formal notice [*sostituiscono le notificazioni*], on condition that they are noted in the record of hearing”.

31. After production of the evidence requested by the parties, the judge may, if he considers it “absolutely necessary”, order that further evidence be adduced (Article 507 § 1 of the CCP).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32. The applicant submitted that the criminal proceedings against him had been unfair. He relied on Article 6 §§ 1 and 3 (c) and (d) of the Convention, the relevant parts of which provide:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ...

3. 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;



(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...”

33. The Government disputed that submission.

#### **A. Admissibility**

34. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and, moreover, that it is not inadmissible on any other grounds. It must therefore be declared admissible.

#### **B. Merits**

##### *1. The parties' submissions*

###### **(a) The applicant**

35. The applicant pointed out first of all that, when the lawyer he had chosen, Mr G., withdrew from the case, the Naples District Court officially appointed a defence lawyer, Mr B. The authorities did not check, however, whether the applicant had received the registered letter from Mr G. informing him that he had withdrawn from the case. Furthermore, Mr B.'s appointment was null and void since he was not on the list of official defence lawyers. In any event Mr B. had not been informed of his appointment. Lastly, the authorities had not advised the applicant either in writing or orally that Mr B. was his new court-appointed lawyer and that he could appoint one of his own choosing. Accordingly, the applicant did not find out that Mr B. had been appointed to represent him until after the trial had ended. In the applicant's submission, these omissions had infringed his right to an effective legal defence.

36. Mr Sannino also noted that as a result of Mr B.'s failure to appear the court had appointed a different person at each hearing to replace the official defence lawyer. Those lawyers had had no knowledge of the case and had not defended him. Nor had they contacted the accused, who, on account of the lack of information from the court, had not even known who was representing him. These factors had amounted to “manifest shortcomings” on the part of the lawyers in question, which had put the onus on the national authorities to intervene. Furthermore, the fact that the appointment of each official defence lawyer had been mentioned in the records of the hearings did not necessarily mean that the information had been communicated to the applicant.

37. The applicant submitted that he could not be blamed for failing to appear at the hearing on 2 November 1999. In the first place notice of the hearing had been issued to a person who did not have authorisation to receive it. Besides that, the applicant had been very busy at the time completing all the formalities for registering with the Labour Office as a person suffering from a permanent disability. The mention of his presence in the record of the hearing was just a clerical error. His absence could have been proved by an audio recording of the hearing or a statement from the court-appointed defence lawyer, neither of which the Government had tried to obtain. In any event, even supposing that the applicant had been present, that would not have sufficed to remedy the negligence of the national authorities.

38. Under Article 6 § 3 (d), the applicant complained that the witnesses appearing on the defence's list had never been examined. In that connection he pointed out that the Naples District Court had agreed to the list in question. Admittedly, the failure to examine the witnesses could be explained by omissions on the part of the court-appointed lawyers, who had not taken the trouble to have the people concerned summoned. However, in the applicant's submission, the Naples District Court should have intervened by ordering them to be summoned and examined or by informing the accused of the position so that he could choose his defence tactics in full knowledge of the situation. The Government's assertion that an examination of the defence witnesses would have been pointless was ill-founded.

39. The applicant submitted that the Government's contention that his trial had been fair because it had complied with domestic law was too formalistic and did not take account of the fact that the Convention guaranteed rights that were "concrete and effective" and not "theoretical or illusory". In particular, it was well known that the system introduced by Article 97 of the CCP did not afford an effective defence. In most cases lawyers appointed by the court at the hearing did not bother to request an adjournment for the purposes of studying a case they were not going to be dealing with in future.

40. The applicant alleged, lastly, that his spontaneous statements of 5 May 1999 had not been dictated by any defence strategy. On the contrary, they had been confused and general comments on the length of the trial and the lack of any basis for the charges and had, moreover, been interrupted by the president of the court, who had indicated that the applicant would in any case be cross-examined in the proceedings by a representative of the public prosecutor's office. That had never happened.

**(b) The Government**

41. The Government observed at the outset that the applicant's assertions were contradicted by the relevant internal documents from which it could be seen that (a) notice of the date of the hearing of 2 November

1999 had been served on the applicant personally; (b) he had been present at that hearing; (c) any decision regarding the appointment by the court of a defence lawyer or a replacement defence lawyer had been made publicly at hearings; and (d) numerous notices of hearings had been sent to Mr B., who had at the material time been president of the “criminal division” (*camera penale*). He had therefore had an institutional role rendering him apt for appointment by the court as a defence lawyer. Had the applicant wanted to dispute the truth of official documents that were deemed reliable under domestic law, he should have lodged a complaint alleging forgery (*querela di falso*) or falsification. As he had not done so, his allegations were unsubstantiated and amounted to “vague, allusive and unfounded” complaints that could not be taken into consideration by the Court.

42. According to the Court’s case-law, moreover, the domestic authorities were not bound to replace a court-appointed lawyer or request him to act for an accused unless they were informed of shortcomings in the accused’s defence. In the instant case the applicant had never drawn the relevant courts’ attention to such shortcomings.

43. In the Government’s submission, the Italian authorities had complied with their positive obligations by appointing Mr B. as the applicant’s defence lawyer and, given his absence, appointing replacement lawyers. Admittedly, a different lawyer had been appointed at each hearing. The fact remained, though, that they had had the same rights as the lawyer they were standing in for, including the option of requesting an adjournment in order to acquaint themselves with the case. Had such a request been made to the court, it would have been obliged to adjourn the proceedings. However, the relevant courts could not intervene where, as in the present case, the replacement lawyers deliberately omitted to use the means and options provided for by law.

44. Furthermore, the applicant had been in a position to pay for his defence and should therefore have paid his court-appointed lawyers’ fees. In the Government’s submission, that fact brought him outside the scope of Article 6 § 3 (c) of the Convention. Moreover, his allegations were – the Government maintained – directed against individuals (the court-appointed lawyers whose fees he had to pay) and not against the State. Had he not been satisfied with the quality of the defence conducted by his court-appointed lawyers, the applicant could have instructed a lawyer of his own choosing.

45. The Government also noted that the applicant had made spontaneous statements at the hearing of 5 May 1999, which showed that he had had a defence strategy. Moreover, counsel for the defendants had put a number of questions to the witnesses. The applicant, who had managed to contact Mr B. for the purpose of applying for leave to appeal out of time and lodging an appeal, could have contacted Mr B. or his replacement lawyer during the trial.

46. In an adversarial trial it was for the accused to summon and examine defence witnesses. The defence had never done so and, after numerous hearings, the applicant had been considered to have waived his right to call the witnesses in question. In accordance with Article 507 of the CCP (see paragraph 31 above), the court could have summoned the witnesses of its own motion if it considered it “absolutely necessary”. However, it had not been considered necessary in the present case, in which there had been a lot of evidence – including documentary evidence – incriminating the applicant. In any event, it was not for the State to summon witnesses whom the defendant had implicitly waived his right to call.

## 2. *The Court’s assessment*

47. As the requirements of paragraph 3 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1 of Article 6, the Court will examine the applicant’s complaints under both provisions taken together (see, among many other authorities, *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 27, ECHR 1999-I).

48. The Court reiterates that, while it confers on everyone charged with a criminal offence the right to “defend himself in person or through legal assistance”, Article 6 § 3 (c) does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court’s task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial (see *Quaranta v. Switzerland*, 24 May 1991, § 30, Series A no. 205). In this respect, it must be remembered that the Convention is designed to “guarantee not rights that are theoretical or illusory but rights that are practical and effective” and that assigning a counsel does not in itself ensure the effectiveness of the assistance he may afford an accused (see *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275, and *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37).

49. Nevertheless, a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes or chosen by the accused. It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between the defendant and his counsel, whether counsel be appointed under a legal-aid scheme or be privately financed (see *Cuscani v. the United Kingdom*, no. 32771/96, § 39, 24 September 2002). The competent national authorities are required under Article 6 § 3 (c) to intervene only if a failure by legal-aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way (see *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168, and *Daud v. Portugal*, 21 April 1998, § 38, *Reports of Judgments and Decisions* 1998-II).

50. In the instant case, on 18 January 1999 Mr G., the lawyer chosen by the applicant, withdrew from the case (see paragraph 7 above). Mr B., the

lawyer appointed by the court to represent the applicant, was informed of the date of the next hearing, but not of his appointment (see paragraph 8 above). That omission on the part of the authorities partly explained Mr B.'s absence, which led to the situation complained of by the applicant, namely, the fact that at each hearing he was represented by a different replacement lawyer (see paragraphs 9-12 and 14 above). There was nothing to suggest that the replacement lawyers had any knowledge of the case. However, they did not request an adjournment in order to acquaint themselves with their client's case. Nor did they ask to examine the defence witnesses whom the District Court had given the applicant's first two lawyers leave to summon (see paragraphs 5-6 above).

51. Admittedly, the applicant, who until 2 November 1999 had attended many of the hearings, never informed the authorities of the difficulties he had been having preparing his defence (contrast *Artico*, cited above, § 36), as the Government rightly pointed out (see paragraph 42 above). The applicant also failed to get in touch with his court-appointed lawyers to seek clarification from them about the conduct of the proceedings and the defence strategy. Nor did he contact the court registry to ask about the outcome of his trial. However, the Court considers that the applicant's conduct could not of itself relieve the authorities of their obligation to take steps to guarantee the effectiveness of the accused's defence. The above-mentioned shortcomings of the court-appointed lawyers were manifest, which put the onus on the domestic authorities to intervene. However, there is nothing to suggest that the latter took measures to guarantee the accused an effective defence and representation.

52. Accordingly, there has been a violation of Article 6 of the Convention.

53. That conclusion makes it unnecessary for the Court to examine the issue whether the applicant was informed of the date of the hearing of 2 November 1999.

## II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 7

54. The applicant complained that he had not had a right to an appeal. He relied on Article 2 of Protocol No. 7, which provides:

“1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.”

55. The applicant complained of the dismissal of his application for leave to appeal out of time and submitted that, not having been informed of his conviction, he had been unable to appeal against the judgment of 12 April 2000. He pointed out that, at the final hearing of his trial, he had been represented by a lawyer replacing his original court-appointed lawyer and that the authorities had not informed him of the outcome of his case. Furthermore, the replacement lawyer in question had not bothered to contact the court-appointed lawyer – Mr B. – or the accused.

56. The Government pointed out that the applicant had not failed to appear. On the contrary, he had taken part in many hearings and, despite having been informed of the date of the hearing of 2 November 1999, had deliberately chosen not to attend. He could not therefore claim to be entitled to a new trial. His right to appeal against the conviction pronounced at first instance had been subject to a strict deadline, which could not be deemed to be contrary to the Convention.

57. The Government also pointed out that the applicant should have known that his failure to attend hearings would result in no procedural document being served on him in person. He could, moreover, reasonably have expected that his trial would end with a conviction. It had therefore been up to him to enquire about the conduct of the proceedings by getting in touch with his court-appointed lawyers. Having failed to take that action, he had unequivocally waived his right to appear and defend himself in person.

58. The Court notes that this complaint is related to the one examined above and must therefore also be declared admissible.

59. Having regard to the conclusion set out in paragraph 52 above, it does not consider it necessary also to examine the question whether there has been a violation of Article 2 of Protocol No. 7 (see *R.R. v. Italy*, no. 42191/02, § 64, 9 June 2005).

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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.”

#### **A. Damage**

61. The applicant alleged that in his case reopening the proceedings would not be the most appropriate means of remedying the violation of the Convention. In his submission, that was an exceptional remedy to be used when every other type of redress was inadequate. Moreover, the Italian legal

system did not at the present time provide for the possibility of ordering a retrial following a judgment of the Court. The applicant submitted that, in the present case, the Government should be asked to delete the conviction in question from his criminal record and order a stay of execution of the sentence.

62. The applicant also claimed 474,000 euros (EUR) – to which should be added an amount for statutory interest and currency depreciation – for pecuniary damage. He observed that, following the inclusion of the conviction in his criminal record, the Italian Society of Authors and Editors (*Società Italiana degli Autori ed Editori* – “the SIAE”), which had offered him an open-ended employment contract, had withdrawn its offer. If his defence rights had been respected during his trial and he had been able to appeal to the Court of Appeal and to the Court of Cassation, the proceedings would probably still have been pending at the time of the SIAE’s offer, or would have ended with an acquittal or a ruling that the prosecution was time-barred. Accordingly, he argued, no final conviction would have been registered in his criminal record and the SIAE would not have refused to employ him. If he had worked for the SIAE, he would have been paid an annual salary of approximately EUR 19,500. After fourteen years’ employment, he could have retired and would have earned a total of EUR 273,000 in salary payments. To that should be added a pension of approximately EUR 12,000 per year which he would have received for approximately fifteen years, thus totalling EUR 180,000. Furthermore, he would have been entitled to approximately EUR 21,000 in end-of-legal-relationship pay.

63. The applicant also alleged that he had sustained non-pecuniary damage, which he calculated at EUR 400,000, on account of the anxiety provoked by the judicial no-man’s land he had been in. After he had learnt of his conviction, his health had deteriorated to the point at which he had been declared totally unfit for work and as suffering from a serious disability. Furthermore, the execution of his sentence, albeit in the form of a probation order, had caused him further damage which he calculated at EUR 200,000.

64. The Government submitted that organising a fresh trial was incompatible with just satisfaction. A finding of a violation did not mean that the applicant’s conviction had been unsafe. Accordingly, no amount for pecuniary damage could be awarded to the applicant, who, moreover, had not received a custodial sentence. With regard to non-pecuniary damage, a finding of a violation in itself constituted sufficient just satisfaction.

65. The Court reiterates at the outset that it has no jurisdiction to quash convictions pronounced by national courts (see *Findlay v. the United Kingdom*, 25 February 1997, § 88, *Reports* 1997-I, and *Albert and Le Compte v. Belgium* (Article 50), 24 October 1983, § 9, Series A no. 68), or to order a stay of execution of a sentence imposed at the end of proceedings

that it has declared incompatible with one of the rules of Article 6 of the Convention. Moreover, it awards sums in respect of just satisfaction as provided for in Article 41 where the loss or damage complained of has been caused by the violation found, the State not being required to pay money in compensation for damage that is not attributable to it (see *Perote Pellon v. Spain*, no. 45238/99, § 57, 25 July 2002, and *Bracci v. Italy*, no. 36822/02, § 71, 13 October 2005).

66. In the instant case the Court has found a violation of Article 6 of the Convention in so far as the institutions of the respondent State did not take action to remedy the manifest shortcomings in the accused's defence. This finding does not entail that his conviction was not well-founded (see *Hauschildt v. Denmark*, 24 May 1989, § 57, Series A no. 154, and *Cianetti v. Italy*, no. 55634/00, § 50, 22 April 2004). The Court cannot speculate as to what the result of the proceedings might have been if the applicant had had the benefit of the guarantees of Article 6 (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 80, ECHR 1999-II), or how long the proceedings would have been if the applicant had been able to appeal to the Court of Appeal and the Court of Cassation.

67. Accordingly, the Court does not consider it appropriate to award the applicant a sum in respect of pecuniary damage. No causal link has been established between the violation found and the loss complained of by the applicant.

68. With regard to non-pecuniary damage, the Court considers that, in the circumstances of the present case, the finding of a violation constitutes in itself sufficient just satisfaction (see, *mutatis mutandis*, *Bracci*, cited above, § 74, and *Craxi v. Italy (no. 1)*, no. 34896/97, § 112, 5 December 2002).

69. The Court reiterates that, in Chamber judgments in cases against Turkey concerning the independence and impartiality of national security courts, it has indicated that, in principle, the most appropriate form of redress would be for the applicant to be given a retrial without delay if he or she requests one (see, among other authorities, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003, and *Tahir Duran v. Turkey*, no. 40997/98, § 23, 29 January 2004). It is also to be noted that a similar position has been adopted in cases against Italy where the finding of a breach of the fairness requirements in Article 6 resulted from an infringement of the right to participate in the trial (see *Somogyi v. Italy*, no. 67972/01, § 86, ECHR 2004-IV, and *R.R. v. Italy*, cited above, § 76) or the right to examine prosecution witnesses (see *Bracci*, cited above, § 75). The Grand Chamber has endorsed the general approach adopted in the cases cited above (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV).

70. The Court accordingly considers that, where an individual, as in the instant case, has been convicted by a court which did not meet the



requirements of Article 6 of the Convention, a retrial or a reopening of the case, if requested, represents in principle an appropriate way of redressing the violation. However, the specific remedial measures, if any, required of a respondent State in order to discharge its obligations under Article 46 of the Convention must depend on the particular circumstances of the individual case and be determined in the light of the terms of the Court's judgment in that case, and with due regard to the above case-law of the Court (see *Öcalan*, loc. cit.).

71. Moreover, it is not the Court's task to indicate the arrangements or form of a possible fresh trial. The respondent State remains free, subject to supervision by the Committee of Ministers of the Council of Europe, to choose the means of complying with its obligation to put the applicant, as far as possible, in the position he would have been in had there not been a breach of the Convention requirements (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85), provided that such means are compatible with the conclusions set out in the Court's judgment and with the rights of the defence (see *Lyons and Others v. the United Kingdom* (dec.), no. 15227/03, ECHR 2003-IX).

## **B. Costs and expenses**

72. The applicant claimed a total amount of EUR 16,169.06 for the costs and expenses incurred before the domestic courts. He observed that in the appeals he had made against the judgment of the Naples District Court he had been ordered to pay legal costs of EUR 4,500, and that he had also had to pay EUR 10,000 in legal fees. In addition, the postal and telephone expenses amounted to EUR 1,669.06.

73. For the costs and expenses incurred before the Court, the applicant claimed EUR 63,861.93.

74. The Government observed that the applicant had not provided any evidence of the costs he had allegedly incurred in the domestic proceedings. Regarding the procedure before the Court, the Government submitted that the amount claimed was influenced by the "disproportionate and unwarranted" claim for just satisfaction.

75. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. In the present case the Court notes that, prior to introducing his application, the applicant had lodged an application for leave to appeal out of time and an application to have the proceedings reopened. The Court therefore accepts that he incurred expenses in seeking redress for the violation of the Convention through the domestic legal system (see *Rojas Morales v. Italy*, no. 39676/98, § 42, 16 November 2000). However, it finds excessive the costs claimed for the proceedings in the Italian courts (see, *mutatis*

*mutandis, Sakkopoulos v. Greece*, no. 61828/00, § 59, 15 January 2004, and *Cianetti*, cited above, § 56). Having regard to the material in its possession and its practice in the matter, it considers it reasonable to award the applicant EUR 4,000 under this head.

76. The Court also considers excessive the amount claimed for costs and expenses relating to the proceedings before it (EUR 63,861.93) and decides to award EUR 5,000 under this head. The total amount due to the applicant for costs and expenses is therefore EUR 9,000.

### **C. Default interest**

77. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *Holds* that it is not necessary to examine the complaint based on Article 2 of Protocol No. 7;
4. *Holds* that the finding of a violation of the Convention constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
5. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros) in respect of costs and expenses, plus any tax that may be chargeable;
  - (b) 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 claim for just satisfaction.

Done in French, and notified in writing on 27 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent Berger  
Registrar

Boštjan M. Zupančič  
President