

STEFANELLI v. SAN MARINO**Right to a fair trial – violation****Article 6, Section 1**

Criminal conviction and appeal were held without public hearing in violation of the Convention.

In a judgment delivered on 8 February 2000 in the case of *Stefanelli v. San Marino*, the European Court of Human Rights held unanimously that there had been a violation of Article 6, Section 1 (right to a fair trial) of the European Convention on Human Rights. Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 10,000,000 Italian lire (ITL) for non-pecuniary damage and 9,000,000 ITL for legal costs and expenses.

This judgment is not final. Pursuant to Article 43, Section 1 of the Convention, within three months from the date of the judgment of a Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

1. Principal facts

The case was brought by Sylviane Stefanelli, a San Marino national born in 1950 and living in San Marino.

On 24 February 1992, the public prosecutor's office of Bologna (Italy) sent a request for a commission rogatory to the court of San Marino to search the office of the applicant. She was suspected of unlawful sale of milk destined to be used for animal breeding. The judicial authorities of San Marino decided to open their own investigation, which was entrusted to *Commissario della Legge* E. On 28 February 1992, the applicant was interrogated and arrested.

On 15 December 1993, the *Commissario della Legge* laid the final charges. After examining witness and depositing the briefs of the defence, the file was sent to Mr G., judge of first instance. Some public hearings to listen to witnesses took place 19 and 20 April, 25 April, and 3 and 4 May 1994. These were held before the *Commissario della Legge*.

On 19 June 1996, the judge of first instance pronounced his decision without holding public hearings nor seeing the accused. He sentenced her to four years and six month imprisonment. He also decided that this was a dangerous topic and ordained measures for public safety.

The applicant appealed and provided her arguments on 12 August 12 1996. The investigation on appeal was led by *Commissario della Legge* E. who was in charge of the investigation in the trial.

On 17 September 1996, the applicant introduced an appeal alleging a violation of the fundamental principles of internal law and of the European Convention on Human Rights. On 26 September she filed a brief.

On 31 October 1996, Mr N., judge of appeal ("*Giudice delle Appellazioni penali*") pronounced the definitive decision in the appeal, which was made public on 18 November 1996. In his decision, the judge rejected the argument of the violation of fundamental principles, because the legislators had already modified the contested legislation in November 1992, and it was his responsibility to decide whether the reform applied to pending procedures or, as he decided, only to new procedures. Finally, the judge confirmed the conviction but reduced the penalty to three years imprisonment.

2. Procedure of the Court

The application was lodged with the European Commission of Human Rights on 13 January 1997. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998, the case was transferred to the Court. It was assigned to the Second Section, which declared the application partly admissible on 1 June 1999.

3. Summary of the judgment

Complaints

The applicant complained that she did not have a public hearing in either her criminal trial or her appeal, in violation of Article 6, Section 1 of the European Convention on Human Rights.

Decision of the Court

Article 6, Section 1 of the Convention

The Court's task consisted only to verify if the defendant government guaranteed the applicant the possibility of an examination of her case in a public hearing.

The Court recalled that the openness of judicial proceedings constituted a fundamental principle protected by Article 6, Section 1 of the Convention. It protects the accused against a secret justice escaping the control of the public and thus constitutes a means of contributing to maintain confidence in the court. By the transparency this gives to the administration of justice, it helps reach the goal of Article 6, Section 1, of a fair trial, which guarantee counts among the principles of

all democratic society.

In the case at hand, some hearings to listen to witness took place in the first instance and, as indicated by the Government, would have been able to call the applicant also. Nevertheless, the Court observed that that oral procedure was not held before a judicial officer (either in the first instance or on appeal) but before *Commissario della Legge* E. who exercised only some investigative functions in the case. The procedure before a judicial officer was held without a public hearing in first instance and on appeal.

Therefore, the Court considered that there had been a violation of Article 6, Section 1 of the Convention in that the applicant did not have a public hearing by the courts in her case.

Article 41 of the Convention

The Court judged that the applicant underwent a certain moral harm. Having consideration to the circumstances of the case, the Court awarded her 10,000,000 ITL. The Court also awarded the applicant 9,000,000 ITL for costs and expenses.

Judgment was given by a Chamber of 7 judges, composed as follows:

Christos Rozakis (Greek), President, Marc Fischbach (Luxemburger), Luigi Ferrari Bravo (Italian), Giovanni Bonello (Maltese), Viera Strážnická (Slovakian), András Baka (Hungarian), and Egils Levits (Latvian), Judges.