GIURISPRUDENZA PENALE

Case of Baratta v. Italy. An opportunity to show full compliance with the ECHR's standards.

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European Court of Human Rights, 13 October 2015
Baratta v. Italy, Application no. 28263/09

1. The Facts

Mr Mario Baratta is an Italian citizen at the time under investigation for murder and mafia-type conspiracy. In 1994 the Pre-Trial Judge of Catanzaro issued an order for remand, which could not be executed for the applicant absconding in Brazil. Shortly afterwards, Mr Baratta was convicted and incarcerated in Rio de Janeiro for carrying forged identity documents.

Between 1995 and 2001, Italy and Brazil undertook the extradition procedure, which the applicant always opposed, until he was rendered to the Italian authorities in April 2001.

Meanwhile, the Italian jurisdiction carried out the criminal proceedings, wherein the defence for Mr Baratta requested the stay of trial, based on the lack of evidence that the applicant was successfully informed of the charges. Such argument was always rejected by the Italian Courts, on the reasoning that, by absconding and opposing the extradition procedure, the applicant implicitly refused to take part to the hearings and hence was knowingly absent. Even more so, the

presence of the counsel was deemed sufficient to ensure the right to a fair trial. As a consequence, in September 2000 he was held liable by the Italian Court of Cassation and sentenced by default to life imprisonment.

As soon as the applicant was rendered to Italy, the penalty started being executed and the counsel filed a petition pursuant to article 670 of the Italian code of criminal procedure ("c.p.p."), claiming the execution should be discontinued and the trial reopened, both being based on an invalid declaration of contumacy. While the Courts of the merit rejected it, in January 2011 the Court of Cassation finally granted the request, released the applicant, and ordered the reopening of the trial. Such decision was taken in consideration of Judgment no. 317/2009 of the Italian Constitutional Court, whereby, in declaring partially unconstitutional article 175 §2 c.p.p., the latter authority recognised the right to the reopening of the trial when the defendant has not duly been informed of the proceedings, regardless of whether the counsel has taken part to them.

In light of the above, the case was referred to the Court of Cosenza, which in December 2014 declared the non-lieu of the proceedings arguing the charges were time barred. The latter decision was impugned by the Prosecutor, while the defendant had meanwhile applied to the ECtHR claiming the violation of a series of human rights.

2. The proceedings before the ECtHR and the subsequent Decision

Mr Baratta filed an application to the ECtHR in May 2009, arguing the violation of the following ECHR articles.

First, the applicant alleged the violation of the right to a fair trial and to appeal pursuant to artt. 6 ECHR[1] and 2 Prot. 7 to the ECHR,[2] based on the invalidity of the declaration of contumacy and the lack of due information of the proceedings. In light of its well established case law, whereby art. 6 is not violated when the applicant is granted a fair trial as a whole,[3] the Court rejected these arguments, recalling the 2014 Decision by the Supreme Court, whereby the trial was reopened. In short, Mr Baratta was overall provided with a fair trial.

On another standpoint, the applicant purported the violation of art. 13 ECHR,[4] claiming the Italian Courts, by wrongly applying the contumacy procedure pursuant to article 175 c.p.p., deprived him of an effective remedy to rebut the fairness of the proceedings. The Court dismissed such argument as well, considering that Mr Baratta's counsel had the opportunity to raise such complaint along the course of the trial. Thus, the Court ascertained no violation of art. 13 either.

Finally, the applicant claimed the violation of art. 5 ECHR,[5] arguing the detention following invalid contumacy proceedings was itself invalid. The Court

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[1] Art. 6 §1: "*In the determination of (...)any criminal charge against him, everyone is entitled to a fair and public hearing (…) by an independent and impartial tribunal (...)*". Art. 6 §3a : "*Everyone charged with a criminal offence has the right to be informed promptly(…) of the nature and cause of the accusation against him*".

[2] Art. 2 §1 Prot. 7: "*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*".

[3] On the matter, see the leading case Barberà and Others v. Spain.

[4] Art. 13 §1: "*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*".

[5] Art. 5 §1a: "*Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure*

agreed upon the latter point and declared the unlawfulness of the detention. As a matter of facts, the eventual reopening of the proceedings by the Supreme Court in 2014, despite making the trial overall fair, did not ensure a legitimate deprivation of liberty. As a consequence, the Court found a violation of article 5 and sentenced Italy to EUR 5.000 compensation in favour of Mr Baratta.

3. The current Italian legal framework fully complies with the ECHR's standards.

We seize the opportunity of this Decision to wonder what legal mechanims went wrong in the Baratta case, and see to what extent the Italian law currently complies with the Convention.

It appears clear that the ECtHR requires Member States to provide their citizens with the concrete right to be personally informed of the charges and proceedings against them, so that any trial carried out in their absence results from a fully conscious decision of theirs.

In light of the above, it is no doubt that the Italian law in force at the time of the Baratta case did not ensure the mentioned standards. In fact, the national Courts used to constantly interpret article 175 §2 c.p.p. in such a way that the conscious absence of the defendant could be derived from implicit elements, as the opposition to the extradition procedure or the sole presence of the counsel.

Nonetheless, on the one hand we recall the afore-quoted Judgment no. 317/2009 by the Italian Constitutional Court, whereby article 175 c.p.p. was declared unconstitutional specifically for not granting the reopening of the trial to the

prescribed by law:(a) the lawful detention of a person after conviction by a competent court (...)".

accused, who has not had actual knowledge of the proceedings, regardless of whether the counsel took part to the trial.

On the other hand, we deem worth noting that Italian Statute no. 67/2014 significantly reformed the procedural code, by abolishing the contumacy procedure. According to such law, in case the accused does not show up at the hearing, either there is evidence that he is informed of the charges and trial (and in this case the proceedings are carried out *in absentia*), or the judge is compelled to declare the stay of trial, until the mentioned standard of proof is reached.[6]

Considering the described new national standards, it becomes clear that any future case similar to the one of Mr Baratta will be managed by the Italian Court, in a way that no trial is carried out unbeknownst to the accused. Thus, we believe the chances for Italy of incurring another such conviction have sharply decreased.

In conclusion, we acknowledge the past national law was not suitable to fulfil the ECHR standard as to article 5 (whence the present sentence). At the same time however, we note that the recent reform of the criminal procedure reached the goals required by the European Court, with the effect that the Italian law currently complies with the international standards insofar as the trial *in absentia* is concerned.

[6] See article 11, Italian Statute no. 67/2014.