



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

CASE OF BOTTA v. ITALY

(153/1996/772/973)

JUDGMENT

STRASBOURG

24 February 1998

The present judgment is subject to editorial revision before its reproduction in final form in *Reports of Judgments and Decisions* 1998. These reports are obtainable from the publisher Carl Heymanns Verlag KG (Luxemburger Straße 449, D-50939 Köln), who will also arrange for their distribution in association with the agents for certain countries as listed overleaf.

List of Agents

Belgium: Etablissements Emile Bruylant (rue de la Régence 67,
B-1000 Bruxelles)

Luxembourg: Librairie Promoculture (14, rue Duchscher
(place de Paris), B.P. 1142, L-1011 Luxembourg-Gare)

The Netherlands: B.V. Juridische Boekhandel & Antiquariaat
A. Jongbloed & Zoon (Noordeinde 39, NL-2514 GC 's-Gravenhage)

SUMMARY¹

Judgment delivered by a Chamber

Italy – State’s failure to take measures to remedy omissions imputable to private bathing establishments which prevented disabled people from gaining access to a beach and the sea

I. ARTICLE 8 OF THE CONVENTION

Private life: includes person’s physical and psychological integrity – guarantee afforded by Article 8 of Convention primarily intended to ensure development, without outside interference, of personality of each individual in his relations with other human beings.

Applicant complained in substance of lack of action by State. Article 8: essential object to protect individual against arbitrary interference by public authorities – does not merely compel State to abstain from such interference: in addition to this negative undertaking there may be positive obligations inherent in effective respect for private or family life. These may involve adoption of measures designed to secure respect for private life even in sphere of relations of individuals between themselves.

Concept of respect: not precisely defined – regard to be had to fair balance that has to be struck between general interest and interests of the individual, while State has, in any event, a margin of appreciation.

Court has held that a State has obligations of this type where it has found a direct and immediate link between measures sought by an applicant and latter’s private and/or family life.

Right asserted by applicant (to gain access to beach and sea at a place distant from his normal place of residence during his holidays) concerned interpersonal relations of such broad and indeterminate scope that there could be no conceivable direct link between measures State was urged to take and applicant’s private life.

Conclusion: Article 8 inapplicable (unanimously).

II. ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

Article 14: no room for its application unless facts of case fall within ambit of one or more of Convention’s provisions – as Court had concluded that Article 8 was not applicable, could not apply to present case.

Conclusion: Article 14 inapplicable (unanimously).

COURT’S CASE-LAW REFERRED TO

9.10.1979, *Airey v. Ireland*; 26.3.1985, *X and Y v. the Netherlands*; 28.5.1985, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*; 28.10.1987, *Inze v. Austria*; 16.12.1992, *Niemietz v. Germany*; 25.11.1994, *Stjerna v. Finland*; 9.12.1994, *López Ostra v. Spain*; 19.2.1998, *Guerra and Others v. Italy*

1. This summary by the registry does not bind the Court.

In the case of Botta v. Italy¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court B², as a Chamber composed of the following judges:

Mr F. GÖLCÜKLÜ, *President*,

Mr F. MATSCHER,

Mr C. RUSSO,

Mr R. PEKKANEN,

Sir John FREELAND,

Mr L. WILDHABER,

Mr G. MIFSUD BONNICI,

Mr B. REPIK,

Mr P. JAMBREK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 26 September 1997 and 2 February 1998,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 4 December 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 21439/93) against the Italian Republic lodged with the Commission under Article 25 by an Italian national, Mr Maurizio Botta, on 30 July 1992.

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 8 and 14 of the Convention.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant stated that he wished to take part in the

Notes by the Registrar

1. The case is numbered 153/1996/772/973. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case’s position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

proceedings and designated the lawyer who would represent him (Rule 31). The lawyer was given leave by the President of the Court, Mr R. Ryssdal, to use the Italian language during the written proceedings (Rule 28 § 3).

3. The Chamber to be constituted included *ex officio* Mr C. Russo, the elected judge of Italian nationality (Article 43 of the Convention), and Mr Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 20 January 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr F. Matscher, Mr B. Walsh, Sir John Freeland, Mr L. Wildhaber, Mr G. Mifsud Bonnici and Mr P. Jambrek (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently, Mr R. Pekkanen, substitute judge, replaced Mr Walsh, who was unable to take part in the further consideration of the case (Rules 22 § 1 and 24 § 1).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Italian Government (“the Government”), the applicant’s lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government’s memorials on 18 July 1997.

5. On 9 September 1997 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President’s instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 September 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr V. ESPOSITO, Divisional President,
Court of Cassation,

co-Agent;

(b) *for the Commission*

Mr F. MARTÍNEZ,

Delegate;

(c) *for the applicant*

Mr B. NASCIBENE, of the Milan Bar,
and professor of international law,
Mr M. CONDINANZI,

*Counsel,
Adviser.*

The Court heard addresses by Mr Martínez, Mr Nascimbene and Mr Esposito.

7. As Mr Ryssdal was unable to take part in the deliberations on 2 February 1998, Mr Gölcüklü replaced him as President of the Chamber (Rule 21 § 6, second paragraph) and Mr B. Repik, substitute judge, replaced him as a full member of the Chamber (Rule 22 § 1).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. Mr Botta, who was born in 1939 and lives in Trezzano sul Naviglio (Milan province), is physically disabled.

9. In August 1990 he went on holiday to the seaside resort of Lido degli Estensi, near to the town of Comacchio (Ferrara province) with a friend, who is also physically disabled. There he discovered that the bathing establishments were not equipped with the facilities needed to enable disabled people to gain access to the beach and the sea (particularly special access ramps and specially equipped lavatories and washrooms), in breach of Italian legislation, which required a clause obliging private beaches to facilitate the access of disabled people to be added to the relevant concession contracts and made provision for compliance to be enforced by the competent local authorities. According to Comacchio District Council, the compulsory clause was, however, only added to concession contracts signed after the adoption of the provisions concerned.

10. The applicant asserts that he was for a time able to gain access in his vehicle to certain public beaches without facilities, but was later prevented from doing so because a barrier had been erected across the entrance by order of the Ravenna harbour-master.

11. On 26 March 1991 the applicant sent a letter to the mayor of Comacchio asking him to take the necessary measures to remedy the shortcomings noted the previous year. No reply was received.

12. In August 1991 Mr Botta returned to Lido degli Estensi, where he found that none of the measures requested had been implemented, although they were mandatory. He was therefore obliged to ask the local coastal authority for permission to drive his vehicle onto a public beach without facilities. He also wrote to various local bodies, receiving the following replies: the president of the cooperative which ran the resort's private beaches informed him that the concession contracts did not stipulate any

obligation to install the facilities requested; the local coastal authority replied that it had to receive an official request before it could authorise the construction of special access ramps on the beaches; the mayor asserted that it was the private beaches' responsibility to install the facilities in question, but nevertheless gave the applicant permission to drive onto a public beach in his vehicle.

In an undated memorandum the coastal authority gave him permission to drive onto a public beach without facilities in his vehicle for a limited period expiring on 31 August 1991.

13. On 9 August 1991 the applicant decided to lodge a complaint with the *carabinieri* against the Minister for Merchant Shipping, the Ravenna harbour-master and the mayor and deputy mayor of Comacchio. He alleged that, by failing to take any steps whatsoever to oblige the private beaches to install the facilities for disabled people prescribed by law on pain of cancellation of their licences, these authorities had committed the offence of omitting to perform an official duty (*omissione d'atti d'ufficio*), as defined in Article 328 of the Criminal Code.

On 20 December 1991 he asked the Ferrara public prosecutor's office to inform him where matters stood in the case.

On 5 May 1992 the public prosecutor's office submitted that the proceedings should be discontinued.

14. In an order of 12 May 1992 the judge responsible for preliminary investigations (*giudice per le indagini preliminari*) attached to the Ferrara District Court ordered the discontinuation of the proceedings on the ground that, having completed his inquiry, he had not found any evidence that the offence defined in Article 328 of the Criminal Code had been committed, given that the beaches' concession contracts all contained a clause which obliged bathing establishments to make the beaches accessible to disabled people and to install at least one changing cubicle and one lavatory for their use.

On 1 September 1992 Mr Botta once again wrote to the Ferrara public prosecutor's office seeking information about the state of the proceedings.

On 16 September 1992 he was informed by telephone that the proceedings relating to his complaint had been discontinued.

15. According to information supplied by the applicant and not contradicted by the Government, although some of the private beaches in Lido degli Estensi have subsequently installed changing cubicles and lavatories for disabled people, in July 1997 none of them had yet built a ramp designed to permit disabled people to gain access to the beach and the sea. On 29 August 1997 Comacchio District Council informed the registry of the Court of the adoption, on 11 August 1997, of the resort's new improvements plan, under which compliance with the law on bathing establishments had to be achieved by 30 April 1999 at the latest.

II. RELEVANT LAW

A. Domestic law

16. Law no. 13 of 9 January 1989 contains provisions intended to guarantee disabled people effective access to private buildings and establishments and the removal of architectural obstructions (*barriere architettoniche*). section 1(2) laid down in particular that within three months of its entry into force the Minister of Public Works had to publish in the form of a decree the technical specifications to be used for the construction of private buildings and low-rent housing. The law also gives mayors certain duties, including an obligation to ensure that work to adapt facilities for use by disabled people is carried out at their request. In particular, section 11 provides that, after receiving a request from a disabled person, a mayor must calculate what sum the District Council requires to do the work and inform the Region accordingly. The Region then ascertains its own needs and requests the necessary funds from the Ministry of Public Works. This money is paid out from the *ad hoc* fund set up pursuant to section 10 of the Law.

17. On 14 June 1989, pursuant to section 1(2) of the Law, the Ministry of Public Works adopted a decree (no. 236) requiring all future contracts awarding concessions to private beaches to include a clause obliging the beaches to install at least one changing cubicle and one lavatory specially designed for the use of disabled people and in addition to construct a special ramp enabling them to gain access to the beach and the sea.

On 23 January 1990 the Ministry of Merchant Shipping drew the attention of all harbour-masters to these provisions.

18. Moreover, section 23(3) of Law no. 104 of 5 February 1992 makes the grant of a concession in respect of public land, and its renewal, subject to implementation of the above measures by the establishments concerned. In addition, Law no. 118 of 30 March 1971 lays down equivalent provisions regarding the removal of architectural obstructions from public buildings and buildings open to the public.

19. Lastly section 41(8) of Law no. 104 of 1992 requires the competent administrative authorities to send the Prime Minister an annual report on the measures to assist disabled people for which they bear responsibility.

In 1995 no report for the purposes of section 41(8) of Law no. 104 of 1992 was submitted by the Ministry of Transport and Shipping, which had replaced the Ministry of Merchant Shipping in 1994, and the report submitted by the Ministry of Public Works merely stated that in 1994 none of the work for which it bore responsibility had been carried out because the relevant procedures had not yet been laid down.

B. Work by the Council of Europe

20. Recommendation No. R (92) 6 of the Committee of Ministers, of 9 April 1992, on a coherent policy for people with disabilities, defines a handicap as

“a social disadvantage, for a given individual, resulting from an impairment or a disability, that limits or prevents the fulfilment of a role that is normal (depending on age, sex, and social and cultural factors) for that individual”.

The recommendation urges member States of the Council of Europe to “guarantee the right of people with disabilities to an independent life and full integration into society, and recognise society’s duty to make this possible” so as to ensure “equality of opportunity” for people with disabilities. The public authorities should aim, *inter alia*, to enable people with disabilities “to have as much mobility as possible, and access to buildings and means of transport” and “to play a full role in society and take part in economic, social, leisure, recreational and cultural activities”.

As regards leisure time and cultural activities in particular, Recommendation No. R (92) 6 states:

“All leisure, cultural and holiday activities should be made accessible to people with disabilities;

Structural, technical, physical and attitudinal obstacles which limit the enjoyment of the above activities should be removed. In particular, access to cinemas, theatres, museums, art galleries, tourist venues and holiday centres should be improved...

Cultural and leisure venues should be planned and equipped so that they are accessible and can be enjoyed by people with disabilities.”

The recommendation also states: “The exercise of basic legal rights of people with disabilities should be protected, including being free from discrimination.”

21. Recommendation 1185 (1992), adopted by the Parliamentary Assembly of the Council of Europe on 7 May 1992, on rehabilitation policies for the disabled, emphasises: “Society has a duty to adapt its standards to the specific needs of disabled people in order to ensure that they can lead independent lives.” In furtherance of that aim, it calls on the governments and agencies concerned “to strive for and encourage genuine active participation by disabled people ... in the community and society” and, to that end, “to guarantee ease of access to buildings”.

22. The revised European Social Charter, adopted by the Committee of Ministers on 1–4 April 1996 and opened for signature on 3 May 1996, provides in its Article 15, entitled “Right of persons with disabilities to independence, social integration and participation in the life of the community”:

“With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

...

3. to promote their full social integration and participation in the life of the community, in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.”

PROCEEDINGS BEFORE THE COMMISSION

23. Mr Botta applied to the Commission on 30 July 1992. He complained (a) that he had been subjected to inhuman and degrading treatment (Article 3 of the Convention); (b) of restrictions on his right to liberty and security of person (Article 5); (c) of discrimination affecting the enjoyment of his rights on account of his physical disability (Article 14); (d) that he had not had an effective remedy before a national authority (Article 13); and (e) of an infringement of his right to a fair hearing within a reasonable time by an independent and impartial tribunal (Article 6 § 1).

24. On 15 January 1996 the Commission declared the application (no. 21439/93) admissible in so far as it concerned the first three complaints, after considering the facts underlying the first two of these from the standpoint of Article 8, taken both separately and in conjunction with Article 14, and declared the remainder of the application inadmissible.

In its report of 15 October 1996 (Article 31) it expressed the opinion by twenty-four votes to six that there had been no violation of Article 8 of the Convention and unanimously that there had been no violation of Article 14 taken in conjunction with Article 8. The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

25. The Government asked the Court to hold that there had been no violation of the Convention, whether under Article 8 or under Article 14 read in conjunction with Article 8.

26. The applicant's lawyer asked the Court to hold that those provisions had been breached and to award his client just satisfaction.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. The applicant complained, firstly, of impairment of his private life and the development of his personality resulting from the Italian State's failure to take appropriate measures to remedy the omissions imputable to the private bathing establishments of Lido degli Estensi (Comacchio), namely the lack of lavatories and ramps providing access to the sea for the use of disabled people. He relied on Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is available from the registry.

The applicant asserted that he was unable to enjoy a normal social life which would enable him to participate in the life of the community and to exercise essential rights, such as his non-pecuniary personal rights, not because of interference by the State but on account of its failure to discharge its positive obligations to adopt measures and to monitor compliance with domestic provisions relating to private beaches.

By adopting Law no. 13 of 9 January 1989 and Law no. 104 of 5 February 1992, the Italian State had taken on the obligation to guarantee disabled people full respect for their human dignity, namely the right to freedom and independence, integration into the family, education, employment and society. The State also, as in the present case, imposed obligations on third parties and had a duty to enforce the law. It therefore had positive obligations falling within the scope of Article 8 of the Convention.

Limiting the concept of private life to its affective aspects only would not be consonant with the trend of the Court's case-law, which was based on a pragmatic, common-sense approach rather than a formalistic or purely legal one.

28. In the Commission's view, the sphere of human relations at issue in the present case concerned a particularly broad range of social relations. The rights asserted by the applicant were social in character, concerning as they did participation by disabled people in recreational and leisure activities associated with beaches, the scope of which went beyond the concept of legal obligation inherent in the idea of "respect" for "private life" contained in paragraph 1 of Article 8.

In that context fulfilment by States of their domestic or international legislative or administrative obligations depended on a number of factors, in particular financial ones. As States had a wide margin of appreciation regarding the choice of the means to be employed to discharge the obligations set forth in the relevant legislation, the right asserted by the applicant fell outside the scope of Article 8.

In any event, the social nature of the right concerned required more flexible protection machinery, such as that set up under the European Social Charter. Article 8 was accordingly inapplicable.

29. The Government agreed. Interpreting Article 8 so broadly as to include in States' positive obligations the obligation to ensure the satisfactory development of each individual's recreational activities would amount to altering the meaning of the provision in question to such an extent that it would be unrecognisable to those who had drafted it.

Once the door was open for a development of that type, it would be extremely difficult to set limits. It would be necessary, for example, to take into consideration obstacles resulting from the insufficient means of those who wished to take part in such activities. That approach was likely to transform the Convention institutions into arbiters of the social policies of the States party to the Convention, a role which did not form part of either the object or the purpose of the Convention.

30. In the applicant's submission, the Commission's argument about the social character of the right in question was unacceptably reductionist. The right did, admittedly, have economic and social aspects and consequences, but it indubitably had all the features required to bring it within the concept of a legal obligation inherent in respect for private life.

The wide margin of appreciation to be left to the State according to the Commission, which had referred in particular to available financial resources, should not be taken to mean that arbitrary action by the State was justified or that it was legitimate to plead economic difficulties.

In connection with the latter point, the applicant referred to the provisions of Law no. 104/92, section 42 of which provided for funds to be made available for all work designed to remove architectural obstacles. The fact that expenditure had not been properly estimated was something for which private individuals could not be held to blame.

Lastly, the reference to the new version of the European Social Charter was all the more unacceptable because it had not been opened for signature until 3 May 1996, that is four years after the application had been lodged with the Commission.

31. The Court must determine whether the right asserted by Mr Botta falls within the scope of the concept of "respect" for "private life" set forth in Article 8 of the Convention.

32. Private life, in the Court's view, includes a person's physical and psychological integrity; the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings (see, *mutatis mutandis*, the Niemietz v. Germany judgment of 16 December 1992, Series A no. 251-B, p. 33, § 29).

33. In the instant case the applicant complained in substance not of action but of a lack of action by the State. While the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These

obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see the *X and Y v. the Netherlands* judgment of 26 March 1985, Series A no. 91, p. 11, § 23, and the *Stjerna v. Finland* judgment of 25 November 1994, Series A no. 299-B, p. 61, § 38). However, the concept of respect is not precisely defined. In order to determine whether such obligations exist, regard must be had to the fair balance that has to be struck between the general interest and the interests of the individual, while the State has, in any event, a margin of appreciation.

34. The Court has held that a State has obligations of this type where it has found a direct and immediate link between the measures sought by an applicant and the latter's private and/or family life.

Thus, in the case of *Airey v. Ireland* (judgment of 9 October 1979, Series A no. 32), the Court held that the applicant had been the victim of a violation of Article 8 on the ground that under domestic law there was no system of legal aid in separation proceedings, which by denying access to court directly affected her private and family life.

In the above-mentioned *X and Y v. the Netherlands* case, which concerned the rape of a mentally handicapped person and accordingly related to her physical and psychological integrity, the Court found that because of its shortcomings the Netherlands Criminal Code had not provided the person concerned with practical and effective protection (p. 14, § 30).

More recently, in the *López Ostra v. Spain* judgment (*mutatis mutandis*, 9 December 1994, Series A no. 303-C), in connection with the harmful effects of pollution caused by the activity of a waste-water treatment plant situated near the applicant's home, the Court held that the respondent State had not succeeded in striking a fair balance between the interest of the town of Lorca's economic well-being – that of having a waste-treatment plant – and the applicant's effective enjoyment of her right to respect for her home and her private and family life (p. 56, § 58).

Lastly, in the *Guerra and Others v. Italy* judgment of 19 February 1998 (*mutatis mutandis*, *Reports of Judgments and Decisions* 1998-I), the Court held that the direct effect of the toxic emissions from the Enichem factory on the applicants' right to respect for their private and family life meant that Article 8 was applicable (p. 227, § 57). It decided that Italy had breached that provision in that it had not communicated to the applicants essential information that would have enabled them to assess the risks they and their families might run if they continued to live in Manfredonia, a town particularly exposed to danger in the event of an accident within the confines of the factory (p. 228, § 60).

35. In the instant case, however, the right asserted by Mr Botta, namely the right to gain access to the beach and the sea at a place distant from his normal place of residence during his holidays, concerns interpersonal relations of such broad and indeterminate scope that there can be no conceivable direct link between the measures the State was urged to take in order to make good the omissions of the private bathing establishments and the applicant's private life.

Accordingly, Article 8 is not applicable.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

36. Article 14 of the Convention provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

37. Relying on Article 14 taken in conjunction with Article 8, the applicant asserted that he was the victim of discrimination against him as a disabled person in the exercise of fundamental rights secured to all. If the concept of discrimination covered all cases in which an individual was treated less favourably than another individual, without proper justification, then a disabled person suffered different, or differentiated, treatment, without objective or reasonable justification, in relation to people who were not disabled. Admittedly, there was no longer any such discrimination *de jure*, since Italian legislation not only contained various provisions designed to ensure equality but also laid down “positive measures” in favour of disabled people. The disparity continued to exist, however, *de facto*, as could be seen in the situation and circumstances which had obtained in the present case. Moreover, it was the Court's practice to consider the particular circumstances of a given case in order to decide whether there had been any discriminatory treatment; it did not assess the impugned domestic rules in the abstract but rather the manner in which they had been applied to the person concerned.

38. The Government and the Commission rejected this argument.

39. According to the Court's case-law, “Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect solely in relation to ‘the enjoyment of the rights and freedoms’ safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of one or more of those provisions – and to this extent it is autonomous –, there can be no room for its application unless the facts of the case fall within the ambit of one or more of the latter” (see the *Abdulaziz, Cabales and Balkandali v. the United Kingdom* judgment of 28 May 1985, Series A no. 94, p. 35, § 71,

and the Inze v. Austria judgment of 28 October 1987, Series A no. 126, p. 17, § 36).

As the Court has concluded that Article 8 is not applicable, Article 14 cannot apply to the present case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that Article 8 of the Convention is not applicable;
2. *Holds* that Article 14 of the Convention is not applicable.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 February 1998.

Signed: Feyyaz GÖLCÜKLÜ
President

Signed: Herbert PETZOLD
Registrar