

Botta v Italy

The European Court of Human Rights

(Application no. 21439/93)



<http://disabilityrights.law.hku.hk>



Quick Facts

Applicant: Botta

Member State: Italy

Court: European Court of Human Rights

Date Decided: 24 February 1998

Issue: Whether the right asserted by the applicant could fall within the scope of the concept of “respect” for “private life”, according to Article 8 of the European Convention on Human Rights (and thus, whether the Italian State had a positive obligation to protect and remedy the right of disabled people to gain access and facilities to and in a beach).

Case Synopsis: The applicant, an Italian citizen, was physically disabled. When he went on a holiday in August 1990, he discovered that the private beaches were not equipped with sufficient facilities (namely special access ramps, lavatories, and washrooms) for disabled people to get

access to the beach and the sea, which was required by the Italian law. After complaining to the mayor of Commachio, he found no significant improvement was made. Therefore, he wanted to rely on the local legislation, for instance, the Criminal Code, to launch the lawsuit against the government, in order to remedy the omission of the private bathing establishments and the government. When he failed to seek justice from the national court, he filed the claim to the European Court of Human Rights, by relying on the European Convention on Human Rights and Fun. He alleged that the State should “guarantee the right of people with disabilities to an independent life and full integration into society”, on the basic of equal opportunity and without discrimination.

Procedural Background

Domestic Remedies

In August 1991, the applicant launched the lawsuit against the government in breach of the obligation to monitor the installation of suitable facilities by positive means. In light of the fact that the district court discontinued his proceedings, in July 1992, he submitted his claims to the European Court of Human Rights.

Admissibility

The applicant sought to rely on Article 3, Article 5, Article 6, Article 13 and Article 14 of the Convention but the Court declared that only Article 8 and 14 were admissible and in dispute.

Case Summary

The applicant claimed that the Italian government failed to take appropriate measures to remedy the omissions by the private bathing establishments, which eventually led to the impairment of his private life and the development of his personality. The Court examined whether the right asserted by the plaintiff could fall within the scope of “respect” for “private life”.

On the one hand, the Court emphasized that the scope of such article was not restricted to mere omission of interference. In certain conditions, the government bear positive obligation in contributing to effective respect for private life.

On the other hand, every case had its own unique nature. So, to determine whether the positive obligations exist, the Court was obliged to strike a fair balance and allow the State to have “a margin of appreciation”, which indicated reasonable flexibility. Owing to factors like the seriousness of the incident and the fair drafting of the contract, the Court unanimously decided that Article 8 (right to privacy) was not breached.

The Court then decided that Article 14 (right to non-discrimination) was not in dispute because it had no independent existence and only appeared when other articles were breached. The purpose of the Article is only to “complement the other substantive provisions of the Convention and its Protocols”. The Court states that 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, as illustrated in ***Abdulaziz, Cabales and Balkandali v the United Kingdom*** and ***Inze v Austria***. Considering the particular situation here, there was no infringement of the right to respect for private life, and thus no discrimination.

Significance

On a regional level

This case laid down a pragmatic and common-sense approach in determining the obligations of the government, especially when the right concerned could involve a broad and indeterminate scope of social relations. The Court clarified Article 8 well by citing and discussing other cases. Concerning the positive obligations of the government, a lack of provision of legal aid as in the case of ***Airey v Ireland***, failure to adopt measures to protect mentally handicapped person from sexual assault and rape as in the case of ***X and Y v. the Netherlands***, as well as failure to inform and protect a family from pollution as in the cases of ***López Ostra v Spain*** and ***Guerra and Others v Italy***, could all constitute a breach of Article 8 of the Convention. This case is useful reference for future disputes or submissions related to Article 8.

Moreover, the guiding principle laid down by the Court has high reference value. In this case, the applicant complained not of action but of a lack of action by the State. As the State has both positive and negative obligations, the scope of the respect it should give to the disabled person is determined by the balance between the “general interest” and the “interests of the individual”. This case did not change the principles in the above cases and maintain an effect to regulate the State practice. More than that, it reconciled with them and affirmed clearly

that the State has “in any event, a margin of appreciation”.

After all, the obligations of the state are only established when there is a “direct and immediate link between the measures sought by an application and the latter’s private and/or family life”.

On a national level

This case helped explore whether the rights guaranteed in the European Convention could be fairly protected in the local/national level, i.e. the Italian legislation. As an example, domestically, the applicant argued for his rights to suitable facilities on the beach based on the Law no. 13 of 9 January. Considering the proportionality between the two types of interest, the standard and application of the Italian law was unchallenged after the judgment.

As a more up-to-date article, the discussion paper on disability issues in Italy and the enforcement of relevant laws by Marra can be referenced. One of its highlights focuses on discrimination against people with disabilities. It is relevant to the discussion of the State’s positive obligation to facilitate the disabled person’s right to privacy in this case. Concerning the lack of facilities, it discusses how law no 67 can aid enforcement of the State’s duties to facilitate access for disabled person. For instance, before the law was enacted, “if compliance would have lacked, law did not provide disabled citizens with any remedy suitable to force the public authorities (or private subjects) to build or restructure the building in compliance with the law.” The paper then moved on to talk about how the change of the Italian law concerning disability issue can contribute to the improvements like attribution of responsibility. It echoes with this case and provides a better understanding about the Italian legal framework, as well as how the rights asserted by the applicant and rights alike could be protected.

Cases and Resources

- ***Botta v Italy*** (Application no. 21439/93)