



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

COURT (CHAMBER)

CASE OF FERRANTELLI AND SANTANGELO v. ITALY

(Application no. 19874/92)

JUDGMENT

STRASBOURG

7 August 1996

In the case of Ferrantelli and Santangelo v. Italy¹,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 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:

MM. R. RYSSDAL, *President*,

THÓR VILHJÁLMSSON,

F. GÖLCÜKLÜ,

L.-E. PETTITI,

R. MACDONALD,

C. RUSSO,

J. DE MEYER,

J. MAKARCZYK,

D. GOTCHEV

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

Having deliberated in private on 23 February and 26 June 1996,

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") and by the Italian Government ("the Government") on 29 May 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 19874/92) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by two Italian nationals, Mr Vincenzo Ferrantelli and Mr Gaetano Santangelo, on 2 February 1992.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Articles 45, 47 and 48 (art. 45, art. 47, art. 48). The object of the request and of the application was to obtain a decision as to whether the facts of the case

¹ The case is numbered 48/1995/554/640. 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 the States bound by Protocol No. 9 (P9).

disclosed a breach by the respondent State of its obligations under Article 6 para. 1 of the Convention (art. 6-1).

2. In response to the enquiry made in accordance with Rule 35 para. 3 (d) of Rules of Court B, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Rule 31). The lawyer was given leave by the President of the Court to use the Italian language (Rule 28 para. 3).

3. The Chamber to be constituted included *ex officio* Mr C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)). On 8 June 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Gölcüklü, Mr L.-E. Pettiti, Mr R. Macdonald, Mr J. De Meyer, Mr J. Makarczyk and Mr D. Gotchev (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). In a letter of 21 December 1995 the Government informed the Registrar that they did not intend to submit a memorial and referred the Court to their written pleadings before the Commission. The applicants did not lodge written observations, but on 9 February 1996 submitted their claims for just satisfaction.

5. On 11 January 1996 the Commission had 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 21 February 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr G. Raimondi, magistrato, on secondment to the
Diplomatic Legal Service,
Ministry of Foreign Affairs; co-Agent,

Mr G. Fidelbo, magistrato, on secondment to the
Legal Affairs Department, Ministry of Justice, Counsel,

Mrs M.A. Saragnano, magistrato, on secondment to the
Legal Affairs Department, Ministry of Justice, Adviser;

- for the Commission

Mr S. TRECHSEL, *Delegate*;

- for the applicants

Mr F. MERLUZZI, avvocato, *Counsel*.

The Court heard addresses by Mr Trechsel, Mr Merluzzi and Mr Raimondi.

AS TO THE FACTS

7. Mr Vincenzo Ferrantelli and Mr Gaetano Santangelo, who were born respectively in 1958 and 1959 at Alcamo (Trapani) and who currently live in Brazil, have a heavy prison sentence pending against them following their conviction by the Caltanissetta Court of Appeal on 6 April 1991 in a judgment that was upheld by the Court of Cassation on 8 January 1992 (see paragraphs 30 and 32 below).

A. The investigation

1. The beginning of the inquiry

8. On 26 January 1976 two police officers (carabinieri) were murdered at a barracks in Alcamo Marina. Some clothes, firearms and ammunition were found to be missing.

9. In the night of 11 to 12 February the Alcamo police arrested Mr G.V. who was driving a car with false registration plates. He was found to be unlawfully in possession of firearms. The police concluded on the basis of an initial inspection that one of the two pistols that they had seized had been used to commit the murders and the other had been stolen from the barracks.

10. G.V. was taken to the police station and gave the name of a lawyer, who was not able to come immediately. In the latter's absence, G.V. agreed to an informal interview in the course of which he stated that he belonged to a revolutionary group. Shortly afterwards he asked to see his father, in whose presence he made other revelations concerning the circumstances of the raid, which had been directed against the Italian State rather than the two police officers. While his father was out of hearing, G.V. told the investigators that the applicants and two other persons, G.M. and G.G., had taken part in the crime. All four were friends of his; Mr Ferrantelli was in fact his cousin. G.V. also gave the police information as to the whereabouts of the articles stolen during the attack.

11. When his lawyer arrived at 3 a.m. on 13 February, G.V. confirmed that he had committed the murders, but retracted his statements concerning the involvement of the other persons. A little later he repeated in writing his first statements indicating what part each of those concerned had played.

2. The applicants' arrest

12. The applicants and the other suspects were arrested at their homes between 4 and 5 a.m. on 13 February 1976. They were taken to the Alcamo barracks and were immediately questioned by the carabinieri. At first they were questioned on their own and then, after 10 a.m., a lawyer appointed by the authorities to act for them was present. They all admitted having taken

part in the attack, but gave accounts that were inconsistent with each other and with that given by G.V.

13. According to the admissions register of Trapani prison, when the applicants arrived at the prison they appeared to be in a state of shock and had bruises and abrasions. Mr Ferrantelli told the staff of the admissions office that he had slipped and injured himself.

14. In the course of the afternoon of 13 February, the Trapani public prosecutor questioned all the suspects. G.V. reaffirmed that he had committed the double murder, but again retracted his statements concerning the involvement of the applicants, maintaining that he had made them under duress. Mr Ferrantelli and Mr Santangelo also retracted their confessions. Mr Ferrantelli likewise referred to pressure brought to bear on him by the investigators and ill-treatment at their hands. Mr Santangelo claimed that the police officers had persuaded him that it was in his interests to make a confession because, in view of the damning accusations made by G.V., he would be sentenced to life imprisonment if he did not. At a later stage he maintained that he too had suffered ill-treatment.

Expert medical examinations established that the applicants had slight injuries to their bodies.

15. After a period during which he refused all communication with the investigators and his family, in July 1977 G.V. wrote a letter to the investigating judge asking to be questioned. During his interview with the judge, which was attended by a lawyer appointed by the authorities to act for him, he indicated that he intended to make new revelations in writing.

On 26 October 1977 he was found hanged from a high window in the prison hospital with a handkerchief in his mouth. G.V had only one arm, but the authorities concluded that he had committed suicide.

3. The committal for trial

16. On 23 January 1978 the applicants, who had not had an opportunity to examine or have examined G.V. in the proceedings prior to his death, were committed for trial with the two other accused.

17. On 18 May 1978 the Trapani Assize Court quashed the committal and ordered further inquiries to establish whether the applicants' allegations about the pressure to which they had been subjected could be substantiated, to identify the presumed perpetrators of the ill-treatment and to verify whether the statements to the police officers were credible and voluntary.

The prosecuting authority lodged an appeal on points of law, which was dismissed in January 1979.

18. As the maximum period for pre-trial detention had expired, the applicants were released on 19 May 1979.

On 11 March 1980, the new investigation having reached its conclusion, the four accused were committed for trial. The investigating judge found that there was no case to answer in the matter of the alleged ill-treatment as

the material facts of the offence had not been established (*perché il fatto non sussiste*). He took the view that the injuries noted by the medical reports had been caused by blows received by the accused in the struggles which occurred during their transfer from the barracks. Indeed some of the police officers who had been present at the time had similar injuries. The state of shock observed on their arrival at the prison was attributed to a lack of sleep and the lengthy interrogation. As regards the description by the accused of the premises where the alleged ill-treatment had been carried out and the fact that the accused had named the two officers who were said to have perpetrated the violence, the judge concluded that they could have seen the premises in question on a previous occasion and that the two officers were well known in the small town of Alcamo.

B. The trial proceedings

1. The first trial

19. The proceedings in the Trapani Assize Court began on 25 November 1980 and ended on 10 February 1981 with the acquittal, on the basis of the benefit of the doubt, of the applicants and G.G. G.M. was convicted and sentenced to life imprisonment.

20. The prosecuting authority and the accused appealed. Mr Ferrantelli and Mr Santangelo, in particular, sought their unqualified acquittal.

21. On 23 June 1982 the Palermo Assize Court of Appeal, basing its decision essentially on the statements made to the police officers, also found the applicants and G.G. guilty of the double murder.

22. On 22 December 1984 the Court of Cassation, to which G.M., G.G., Mr Ferrantelli and Mr Santangelo had appealed, on a date that has not been specified, quashed the judgment of 23 June 1982 and remitted the case of G.M. and G.G. to Palermo Assize Court of Appeal and that of the applicants to the Juvenile Section of the Palermo Court of Appeal.

The Court of Cassation noted that even if the pressure described by the appellants had not been as serious as they claimed, the contested confessions had been made without a judicial officer being present. The Trapani judges had not intervened in the first stage of the inquiry except to carry out acts of a purely formal nature. For thirty-six hours the carabinieri had thus been completely free to conduct their inquiries as they wished.

2. The second trial

23. On 7 March 1986 the Juvenile Section of the Palermo Court of Appeal acquitted the applicants on the basis of the benefit of the doubt.

The prosecuting authority and the applicants again appealed to the Court of Cassation.

24. On 12 October 1987 the Court of Cassation quashed the decision of the court below on the ground that it had regarded as established the facts found in the judgment of 22 December 1984, whereas those facts ought to have been the subject of a new investigation. The case was remitted to the Juvenile Section of the Caltanissetta Court of Appeal.

At the same time the Court of Cassation set aside the judgment of the Palermo Assize Court of Appeal of 26 November 1985 convicting G.G. and sentencing him to life imprisonment. The case was remitted to the Caltanissetta Assize Court of Appeal for a decision as to whether there were any extenuating circumstances.

25. On 31 May 1988 the Juvenile Section of the Caltanissetta Court of Appeal quashed the judgment of the Trapani Assize Court of 10 February 1981 in so far as it concerned the applicants and transmitted the file to the Palermo public prosecutor's office. Allowing the objection raised by counsel for Mr Santangelo, the appeal court applied the Constitutional Court's judgment of 15 July 1983 (no. 222) which had declared Article 9 of the Royal Legislative Decree of 20 July 1934 (no. 1404) unconstitutional. That provision had removed from the jurisdiction of the juvenile court (tribunale per I minorenni) criminal proceedings brought against minors accused of committing a criminal offence in concert with adults.

26. On 2 June 1988 the Assize Court of Appeal, presided over by Judge S.P., accorded G.G. the benefit of general extenuating circumstances. It took the view that the facts had been definitively established by the Palermo Assize Court of Appeal, it referred to the "co-perpetrators" of the double crime and to the "precise statement by G.V. that G.G. together with Santangelo had been responsible for physically carrying out the murders".

27. On 6 October 1989 the Palermo Juvenile Court, which was trying the case at first instance, acquitted the applicants on the basis of the benefit of the doubt. The applicants and the prosecuting authority appealed.

28. By an order of 18 April 1990 the Juvenile Section of the Palermo Court of Appeal raised a question as to the proper jurisdiction and transferred the file to the Court of Cassation. It considered that, in declaring the nullity of the judgment of the Trapani Assize Court of 10 February 1981 - applying retrospectively the decision of the Constitutional Court - the Juvenile Section of the Caltanissetta Court of Appeal had breached Article 544 of the former Code of Criminal Procedure, which was in force at the time and which prohibited raising at a retrial on remittal grounds of nullity allegedly arising out of the conduct of earlier stages in the proceedings or the investigation.

29. On 2 October 1990 the Court of Cassation remitted the case to the Juvenile Section of the Caltanissetta Court of Appeal, having confirmed the validity of the judgment of 10 February 1981.

3. *The third trial*

30. On 6 April 1991 that court, presided over by S.P., who had also presided over the Caltanissetta Assize Court of Appeal in G.G.'s trial (see paragraph 26 above), sentenced Mr Santangelo to twenty-two years and five months' imprisonment and a fine of 450,000 Italian lire. Mr Ferrantelli was sentenced to fourteen years and ten months. In its judgment the court noted that lawyers had been continuously present throughout the interrogations, which ruled out any possibility of pressure of such a nature as to undermine the credibility of the confessions. Admittedly one of the lawyers appointed by the authorities to act for the applicants maintained that he had found Mr Ferrantelli chained to a radiator, but according to the same person he had been released before the beginning of the interrogation.

Referring to Article 192 para. 3 of the new Code of Criminal Procedure, which provides that statements made by a person accused of the same offence may be relied on only if they are corroborated by other items of evidence which confirm their credibility, the appeal court based its decision, *inter alia*, on the following considerations:

- the fact that the accused had all made statements implicating each other;
- the fact that it would have taken five people to carry out such an attack;
- the credence that could be attached to the statements of G.V. concerning his responsibility, which was confirmed by other physical evidence;
- a number of items of evidence establishing that those statements were voluntary;
- the fact that the accused were friends;
- the fact that the applicants had helped G.V. to buy or transport the oxygen bottles for the oxyacetylene torch used to cut open the barracks door;
- the fact that on the evening of 12 February 1976 G.V.'s father had been seen by the carabinieri, who were following him, in the applicants' company, near Mr Santangelo's home, and on that occasion the latter had appeared worried, while Mr Ferrantelli had sought to reassure him;
- the discovery at Mr Santangelo's home of a box of matches of a brand that was no longer manufactured, the matches being the same type as those used to light the oxyacetylene torch and found in a garage rented by G.V. The matches had been stolen by G.V. from a tobacconist in January 1976;
- finally the lack of a convincing alibi for any of the accused.

31. On 4 June 1991 the prosecuting authority and the applicants appealed to the Court of Cassation complaining, *inter alia*, of the inadequacy of the appeal court's statement of grounds.

32. In a judgment of 8 January 1992, deposited in the registry on 28 February, the Court of Cassation dismissed the applicants' appeal, finding that the appeal court's assessment of G.V.'s statements implicating

them, their confessions and the corroborating evidence was not open to criticism in terms of the statement of grounds.

33. An application of 18 January 1992 seeking a pardon from the President of the Republic was rejected on a date that has not been specified.

PROCEEDINGS BEFORE THE COMMISSION

34. Mr Ferrantelli and Mr Santangelo applied to the Commission on 2 February 1992. Relying on Article 6 paras. 1 and 3 (d) of the Convention (art. 6-1, art. 6-3-d), they complained that: (1) their case had not been heard within a reasonable time; (2) the proceedings and their conviction had been based on confessions obtained by the carabinieri under duress and the testimony of G.V., whom they had been unable to examine or have examined before his death; (3) the President of the Juvenile Section of the Caltanissetta Court of Appeal, which convicted them in 1991, had already expressed his firm view that they were guilty in 1988 in another trial concerning one of the other perpetrators of the same offence; (4) the case had initially not been tried by a court for juveniles.

35. On 30 August 1993 the Commission declared the application (no. 19874/92) admissible as regards the first three complaints and inadmissible for the rest. In its report of 2 March 1995 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 (art. 6) on each of the three points. The full text of the Commission's opinion is reproduced as an annex to this judgment³.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

36. The Government invited the Court to hold that there had been no violation of Article 6 of the Convention (art. 6).

³ For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-III), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION (art. 6)

37. The applicants complained in the first place of the length of the proceedings brought against them, secondly that they had not had a fair trial and finally of the lack of impartiality of the Juvenile Section of the Caltanissetta Court of Appeal. They relied on Article 6 paras. 1 and 3 (d) of the Convention (art. 6-1, art. 6-3-d), according to which:

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

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(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;

..."

A. Reasonable time

38. The relevant period began on 13 February 1976, the date of the applicants' arrest, and ended on 28 February 1992, when the Court of Cassation's judgment was deposited in the registry. It lasted sixteen years and two weeks.

39. The reasonableness of the length of proceedings is to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment.

40. The Government conceded that the total duration of the proceedings might at first sight appear excessive, but justified it firstly on the basis of the undeniably complex nature of the investigation because of the statements and confessions made and then retracted by the accused and secondly by citing the difficult transitional period which had followed the judgment of the Constitutional Court of 15 July 1983 recognising the jurisdiction of the juvenile courts for offences committed by minors.

41. The applicants disputed the reasons given by the Government. On the first point, their retractions could not be regarded as a circumstance having contributed to making the investigation more complex because every accused is entitled not to cooperate with the investigators. For the rest, it was, in their opinion, unfortunate that the Italian State had not managed to enact clear legislation following the above-mentioned judgment of the Constitutional Court.

42. The Court shares the Commission's view that the case was undoubtedly complex having regard to the nature of the charges and to the problems in determining jurisdiction for offences committed by minors acting in concert with adults. Taken separately, the different phases of the proceedings were, in addition, conducted at a regular pace, apart from the inexplicable period of stagnation of nearly two years during the first investigation, from 13 February 1976 (arrest and interrogation of the applicants) to 23 January 1978 (committal for trial).

If the case is examined as a whole however, the only possible conclusion is that the reasonable time requirement was not complied with because, and this is the decisive consideration, the applicants were not convicted with final effect until sixteen years after the events, which had occurred when they were still minors.

43. There has accordingly been a violation of Article 6 para. 1 (art. 6-1) in this respect.

B. Fair trial

44. The applicants claimed to have been the victims of a breach of Article 6 paras. 1 and 3 (d) (art. 6-1, art. 6-3-d) in that they had been convicted on the basis of confessions obtained by the investigators using physical and psychological pressure. They also complained of the impossibility of examining or having examined before his death, G.V., the prosecution witness.

1. The confessions allegedly obtained under duress

45. The Government affirmed that the applicants' trial had been a fair one. They denied the use of any coercion by the investigators during the applicants' interrogation; the fact that the proceedings instituted against the police officers for ill-treatment had been concluded by a finding that there was no case to answer confirmed this. They further maintained that the judicial authorities had, after an extremely thorough examination of all the information before them, relied, in order to convict the applicants, not only on their confessions but also on the statements of the three other accused and on other evidence.

46. According to the Delegate of the Commission, there can be no doubt that the applicants underwent ill-treatment at the hands of the

carabinieri. Citing the judgments of *Tomasi v. France* of 27 August 1992, Series A no. 241-A, and *Ribitsch v. Austria* of 4 December 1995, Series A no. 336, he called upon the Court to confirm its case-law according to which, in substance, it falls to the respondent State to adduce the proof that injuries sustained by a person in police custody were not caused by the investigators. In this case the Government had not provided any plausible explanation for the applicants' injuries.

47. The Court notes at the outset - and this was conceded by the Delegate of the Commission at the hearing on 21 February 1996 - that, in contrast to the situation in the above-mentioned *Tomasi* and *Ribitsch* cases, the present applicants have not sought to rely on Article 3 of the Convention (art. 3), which prohibits torture and inhuman and degrading treatment.

48. It recalls that the admissibility of evidence is primarily a matter for regulation by national law and, as a rule, it is for the national courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, were fair (see the following judgments: *Barberà, Messegué and Jabardo v. Spain* of 6 December 1988, Series A no. 146, p. 31, para. 68, *Delta v. France* of 19 December 1990, Series A no. 191-A, p. 15, para. 35, and *Isgrò v. Italy* of 19 February 1991, Series A no. 194-A, p. 11, para. 31).

49. In the present case, on 18 May 1978, the Trapani Assize Court, quashing the decision of 23 January 1978 committing the applicants for trial, ordered additional investigative measures to determine the truth of the allegations and the identity of the perpetrators of the alleged ill-treatment (see paragraph 17 above). However, the investigating judge held that there was no case to answer, finding that the injuries reported could be attributed to the blows received by the applicants in the course of struggles with the crowd during their transfer to Trapani prison (see paragraph 18 above). Indeed some of the carabinieri present at the time bore similar marks. In this respect the present case may be distinguished from the *Tomasi* and *Ribitsch* cases.

50. The Court observes that doubts may subsist as to the conduct of the carabinieri during the applicants' interrogations; in their submissions before the Commission the Government themselves referred to a feeling of animosity on the part of the carabinieri. However, the evidence adduced does not provide a sufficient basis for the Court to depart from the findings of the judge responsible for the investigation. It accordingly takes note of the conclusions of the supplementary investigation.

2. The impossibility of examining or having examined G.V.

51. The Court recalls that the guarantees in paragraph 3 (d) of Article 6 (art. 6-3-d) are specific aspects of the right to a fair trial set forth in paragraph 1 (art. 6-1). This must therefore be taken into account when examining this limb of the second complaint under paragraph 1 (art. 6-1)

(see, among other authorities, the Barberà, Messegué and Jabardo judgment cited above, p. 31, para. 67).

In addition, all the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument. However, the use of statements obtained at the pre-trial stage is not in itself inconsistent with paragraphs 3 (d) and 1 of Article 6 (art. 6-3-d, art. 6-1), provided that the rights of the defence have been respected. As a rule, these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he was making his statements or at a later stage of the proceedings (see, the Isgrò judgment cited above, p. 12, para. 34).

52. In this instance, even though the judicial authorities did not, as would have been preferable, organise a confrontation between all the accused during the twenty months preceding G.V.'s tragic death, they cannot be held responsible for the latter event. Furthermore, in its judgment of 6 April 1991, the Juvenile Section of the Caltanissetta Court of Appeal carried out a detailed analysis of the prosecution witness's statements and found them to be corroborated by a series of other items of evidence, such as the fact that all the accused had made statements implicating each other, the fact that the applicants had helped G.V. to buy and to transport the two gas bottles used in the attack on the barracks and the lack of a convincing alibi for either of the accused (see paragraph 30 above).

3. Conclusion

53. In the light of these considerations, the Court takes the view that the applicants had a fair trial and that there has been no violation of Article 6 paras. 1 and 3 (d) (art. 6-1, art. 6-3-d).

C. Impartial tribunal

54. According to Mr Ferrantelli and Mr Santangelo, the Juvenile Section of the Caltanissetta Court of Appeal which convicted them in 1991 could not be regarded as an impartial tribunal within the meaning of paragraph 1 of Article 6 of the Convention (art. 6-1), as its President - Judge S.P. - had already had to consider their case when he had presided over the Caltanissetta Assize Court of Appeal in G.G.'s trial. This was clearly demonstrated by the wording of the judgment of 2 June 1988, sentencing G.G. to a long term of imprisonment.

55. The Government maintained in substance that the two trials had not concerned the same persons and that, in any event, Judge S.P. was the only one of the five Court of Appeal judges to have already dealt - "in a very marginal way" - with the applicants' case.

56. The Court recalls that the existence of impartiality for the purposes of Article 6 para. 1 (art. 6-1) must be determined according to a subjective

test, that is on the basis of the personal conviction and behaviour of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, among other authorities, the *Hauschildt v. Denmark* judgment of 24 May 1989, Series A no. 154, p. 21, para. 46, and the *Thomann v. Switzerland* judgment of 10 June 1996, Reports of Judgments and Decisions 1996-III, p. 815, para. 30).

57. As to the first test, the applicants did not question the personal impartiality of the judge concerned.

58. Under the second, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public. This implies that in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the accused is important but not decisive. What is decisive is whether this fear can be held objectively justified (see the *Hauschildt* judgment, cited above, p. 21, para. 48, and, *mutatis mutandis*, the *Fey v. Austria* judgment of 24 February 1993, Series A no. 255-A, p. 12, para. 30).

59. Like the Commission, the Court notes that in the instant case the fear of a lack of impartiality derived from a double circumstance. In the first place, the judgment of 2 June 1988 of the Caltanissetta Assize Court of Appeal, presided over by Judge S.P. (see paragraph 26 above) contained numerous references to the applicants and their respective roles in the attack on the barracks. In particular, mention was made of the "co-perpetrators" of the double crime and of "the precise statement by G.V. that G.G. together with Santangelo had been responsible for physically carrying out the murders", and it was affirmed that Mr Ferrantelli had helped to search the barracks and to transport material belonging to the carabinieri. Secondly, the judgment of the Juvenile Section of the Caltanissetta Court of Appeal of 6 April 1991 (see paragraph 30 above) convicting the applicants cited numerous extracts from the decision of the Assize Court of Appeal concerning G.G. In the Juvenile Section it was once again Judge S.P. who presided and indeed he was the reporting judge.

60. These circumstances are sufficient to hold the applicants' fears as to the lack of impartiality of the Juvenile Section of the Caltanissetta Court of Appeal to be objectively justified.

There has accordingly been a breach of Article 6 para. 1 (art. 6-1) on this point.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION (art. 50)

61. Under Article 50 of the Convention (art. 50),

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

62. On 9 February 1996 counsel for Mr Ferrantelli and Mr Santangelo lodged with the registry his clients' claims for the damage sustained.

63. The Government contended that the claims were time-barred.

64. According to the Delegate of the Commission, the applicants had not really provided an explanation for their delay in submitting the document in question.

65. The Court notes that under Rule 52 para. 1 of Rules of Court B, any claims that the applicant

"may wish to make under Article 50 of the Convention (art. 50) shall ... be set out in his memorial or, if he does not submit a memorial, in a special document filed at least one month before the date fixed ... for the hearing".

The applicants' lawyer, who did not submit a memorial, did not communicate the claims for just satisfaction until 9 February 1996 (see paragraph 4 above).

The applicants were granted sufficient time for the submission of their claims, which must therefore be dismissed as out of time.

B. Costs and Expenses

66. The applicants did not seek the reimbursement of their costs and expenses incurred in the national courts. As regards those relating to the proceedings before the Court, Mr Ferrantelli and Mr Santangelo received legal aid totalling 9,724 French francs; they did not make a claim for an additional amount.

FOR THESE REASONS, THE COURT

1. Holds unanimously that there has been a violation of Article 6 para. 1 of the Convention (art. 6-1) as regards the length of the proceedings;

2. Holds unanimously that there has been no violation of Article 6 paras. 1 and 3 (d) (art. 6-1, art. 6-3-d) as regards the right to a fair trial;
3. Holds by eight votes to one that there has been a violation of Article 6 para. 1 (art. 6-1) on account of the lack of impartiality of the Juvenile Section of the Caltanissetta Court of Appeal;
4. Dismisses unanimously the applicants' claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 7 August 1996.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 55 para. 2 of Rules of Court B, the partly dissenting opinion of Mr De Meyer is annexed to this judgment.

R. R.
H.P.

PARTLY DISSENTING OPINION OF JUDGE DE MEYER

(Translation)

I much regret that the Court, worshipping once again at the altar of "appearances"¹ (which it had recently begun to abandon in its judgments²), has found a violation of the principle of impartiality in the instant case.

In this respect the present case was very similar to the Thomann case.

Judge S.P., who had to retry the case as President of the Juvenile Section of the Caltanissetta Court of Appeal when he had tried it once already as President of the Caltanissetta Assize Court of Appeal in respect of other defendants and without the applicants being present, was not, in respect of the latter, "in [any] way bound by [his] first decision": as regards the applicants, he undertook "a fresh consideration of the whole case; all the issues raised by the case remain[ed] open and this time [were] examined in adversarial proceedings with the benefit of the more comprehensive information" that could be obtained with the applicants present. As the Court held in the Thomann judgment, "[s]uch a situation is not sufficient to cast doubt on the impartiality of the [judge] in question"³.

There could, however, have been a problem as regards the fairness of the trial if the Juvenile Section had not truly and thoroughly undertaken a fresh consideration of the case and had simply regarded as established the Assize Court of Appeal's findings in respect of the applicants. It was not shown that this was what happened. The judgment of 6 April 1991, for which lengthy, detailed reasons were given⁴, demonstrates that, on the contrary, that court carefully and conscientiously inquired into what role the applicants could have played in the murder of the two police officers. The fact that that judgment refers more than once to the one of 2 June 1988 makes no difference.

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 55 para. 2 of Rules of Court B, the dissenting opinion of Mr De Meyer is annexed to this judgment.

¹ Paragraph 58 of this judgment.

² Bulut v. Austria judgment of 22 February 1996, Report of Judgments and Decisions 1996-II, Pullar v. the United Kingdom judgment of 10 June 1996 and Thomann v. Switzerland judgment

³ Thomann judgment previously cited, pp. 815-16, para. 35. See also the Ringeisen v. Austria judgment of 16 July 1971, Series A no. 13, p. 40, para. 97, and the Diennet v. France judgment of 26 September 1995, Series A no. 325-A, pp. 16 and 17, paras. 37 and 38. of 10 June 1996, Reports 1996-III.

⁴ Paragraphs 30 and 52 of the present judgment.