

In the Bezicheri case*,

* Note by the Registrar: The case is numbered 8/1988/152/206. 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.

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 the Rules of Court, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr Thór Vilhjálmsson,
Mr F. Gölcüklü,
Mr F. Matscher,
Mr J. Pinheiro Farinha,
Mr C. Russo,
Mr S. K. Martens,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 24 June and 26 September 1989,

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 11 May 1988, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 11400/85) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by Mr Marcantonio Bezicheri, an Italian national, on 18 January 1985.

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 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 one of the requirements of Article 5 para. 4 (art. 5-4).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyers who would represent him (Rule 30).

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. 3 (b)). On 30 May 1988, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr Thór Vilhjálmsson, Mr F. Gölcüklü, Mr F. Matscher, Mr S. K. Martens and Mrs E. Palm (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr J. Pinheiro Farinha, substitute judge, replaced Mrs Palm, who was unable to attend (Rules 22 para. 1 and 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber

(Rule 21 para. 5) and consulted - through the Registrar - the Agent of the Italian Government ("the Government"), the Delegate of the Commission and one of the applicant's lawyers on the need for a written procedure (Rule 37 para. 1). In accordance with the orders made in consequence, the registry received the applicant's memorial on 28 September 1988 and the Government's memorial on 2 November 1988.

By a letter which was received on 9 December 1988, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. On 24 October 1988 the President gave the applicant leave to use Italian (Rule 27 para. 3).

6. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 12 May 1989 that the oral proceedings should open on 21 June 1989 (Rule 38).

7. On 7 June 1989 the Commission produced a number of documents. The following day the Government communicated to the registry their observations on the applicant's claims for just satisfaction (Article 50) (art. 50), which were subsequently clarified in a letter of 31 July 1989.

8. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

(a) for the Government

Mr G. Raimondi, magistrato,

Agent's Delegate,

Mr G. Grasso, avvocato,

Counsel;

(b) for the Commission

Mr H. Danelius,

Delegate;

(c) for the applicant

Mr P. Paoli, avvocato,

Counsel.

The Court heard addresses by Mr Raimondi and Mr Grasso for the Government, Mr Danelius for the Commission and Mr Paoli for the applicant, as well as their replies to its questions. Mr Paoli submitted certain documents on the occasion of the hearing. Further documents were lodged by the Government on 9 August 1989.

AS TO THE FACTS

9. Mr Marcantonio Bezicheri is a lawyer practising in Bologna.

He was arrested on 14 May 1983 pursuant to an arrest warrant issued by the Pisa Public Prosecutor and, on the latter's instructions, was remanded in custody on suspicion *inter alia* of having been an accessory to an aggravated murder (*omicidio volontario aggravato*) which had taken place in 1982. It was alleged that in the course of his professional activities he had acted as an intermediary between the murderers and the instigator of the crime, who was in prison.

Within three days of his arrest the Public Prosecutor's Office sought the opening of a full "formal" investigation (*formalizzazione dell'istruttoria*).

10. On 18 May 1983, after the applicant had been questioned by the

Pisa investigating judge, his lawyer applied, under Article 269 of the Code of Criminal Procedure, for his client's release on the ground of insufficient evidence; in the alternative, he requested that Mr Bezicheri be placed under "house arrest" (arresti domiciliari). In accordance with the submissions of the Public Prosecutor's Office, the investigating judge dismissed these requests on 6 June, the first because he considered the warrant to be "based on firm grounds" and the second because he found it to be inadmissible.

11. On 6 July 1983 Mr Bezicheri's lawyer submitted a further application for his release from detention (istanza di scarcerazione per mancanza di indizi) or, failing that, "house arrest". At the same time he also sought, as a subordinate request (in via subordinata), various investigative measures (istanza difensiva istruttoria). He repeated this request on 6 October 1983. The measures sought included inspection of the visitors' register in various prisons to determine whether Mr Bezicheri had met in those establishments the organiser of the murder and the questioning of eleven persons.

The investigating judge took a number of steps, mostly after October 1983. He examined or had examined under rogatory commission - on 30 July, 12, 19, 22 and 26 October and on 3 November and 9 December 1983 - a certain number of witnesses and on 21 September and 5 October 1983 instructed the police to make various enquiries. They communicated a report to him on 10 October.

On 22 December the investigating judge rejected the application of 6 July for Mr Bezicheri's release (or placing under "house arrest") in accordance with the submissions of the Public Prosecutor's Office of 12 December.

12. The following day Mr Bezicheri appealed against this decision under Article 272 bis of the Code of Criminal Procedure to the Pisa Regional Court, which upheld the decision on 13 January 1984 after having examined the merits thereof. Its finding was notified to the applicant on 6 February.

13. On 8 February 1984 the applicant appealed on points of law. He submitted his grounds for appeal - which were based inter alia on Articles 5 and 6 (art. 5, art. 6) of the Convention - on 18 February and 17 April. In accordance with the submissions of the Principal Public Prosecutor's Office, the Court of Cassation dismissed the appeal on 30 July 1984.

On 11 July the Pisa investigating judge had, with the approval of the Public Prosecutor's Office, placed Mr Bezicheri under "house arrest".

14. The criminal proceedings instituted against the applicant were terminated on 2 February 1988 by an order finding that there was no case to answer, made by the investigation chamber of the Florence Court of Appeal. In the meantime he had recovered complete freedom of movement in June 1985.

PROCEEDINGS BEFORE THE COMMISSION

15. In his application of 18 January 1985 to the Commission (no. 11400/85), Mr Bezicheri claimed to be the victim of violations of Article 5 paras. 2 and 4 (art. 5-2, art. 5-4) and of Articles 6, 9, 10 and 11 (art. 6, art. 9, art. 10, art. 11) of the Convention. With regard to Article 5 para. 4 (art. 5-4) he alleged that the Italian courts had not ruled "speedily" on his application for release of 6 July 1983.

16. On 4 March 1987 the Commission declared the application admissible with regard to that last-mentioned complaint and inadmissible for the remainder.

In its report of 10 March 1988 (Article 31) (art. 31) the Commission

concluded by thirteen votes to three, with one abstention, that the relevant proceedings had not been conducted "speedily" as is required under Article 5 para. 4 (art. 5-4). The full text of its opinion is reproduced as an annex to this judgment.

THE GOVERNMENT'S FINAL SUBMISSIONS TO THE COURT

17. At the hearing on 21 June 1989, the Government confirmed the submission put forward in their memorial, whereby they requested the Court to find that "in this case there has been no infringement of Article 5 para. 4 (art. 5-4) of the European Convention by Italy".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 PARA. 4 (art. 5-4)

18. According to Mr Bezicheri, his application of 6 July 1983 (see paragraph 11 above) was not examined "speedily" within the meaning of Article 5 para. 4 (art. 5-4) of the Convention, according to which:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

The Government disputed this view; the Commission on the other hand agreed with it.

19. In the Court's opinion the said application, notwithstanding the fact that the Government affirm the contrary on the basis of certain passages and the final submissions appearing therein, was not intended simply as a request for additional investigative measures. It was principally aimed at contesting the lawfulness of the applicant's detention. This is clear from its title (see paragraph 11 above) and from several sentences. Moreover, the Italian courts consistently interpreted it in this way (see paragraphs 12-13 above).

20. On 14 May 1983 Mr Bezicheri was arrested and placed in detention on remand on the instructions of the Public Prosecutor's Office which, within three days, transmitted the file to the investigating judge, requesting that he open a full "formal" investigation (see paragraph 9 above).

The investigating judge constituted a "court" for the purposes of Article 5 para. 4 (art. 5-4), in view of his independence and the guarantees attaching to the proceedings conducted before him, matters which were not debated before the Court (see, *mutatis mutandis*, the Lamy judgment of 30 March 1989, Series A no. 151, pp. 15-16, paras. 27-29). After having examined the applicant on 18 May 1983, on 6 June he rejected his application for release because the warrant appeared to him to be based on firm grounds (see paragraph 10 above). He therefore carried out a first review of the lawfulness of the detention.

However, new issues could arise at a later stage on this question. Accordingly, the Court must ascertain whether the applicant was subsequently entitled, after a "reasonable interval", to take "proceedings" by which the lawfulness of his continued "detention" was decided "speedily" by a "court" (see, *inter alia*, the Luberti judgment of 23 February 1984, Series A no. 75, p. 15, paras. 31-32).

There is no doubt that the application of 6 July 1983 instituted such "proceedings" and that it was made to a "court", the investigating judge, but the observance of the other two requirements - that proceedings be available at "reasonable intervals" and conducted "speedily" - was a matter of dispute before the Court.

21. The Government do not consider it "reasonable" that the applicant lodged his second application as early as 6 July 1983, barely a month after the dismissal of the first. In their view, the very nature of detention on remand, combined with the review that the judge concerned must conduct of his own motion, justifies a longer interval than for other forms of deprivation of liberty, for example the committal of mentally handicapped persons.

In the Court's opinion, the nature of detention on remand calls for short intervals; there is an assumption in the Convention that detention on remand is to be of strictly limited duration (Article 5 para. 3) (art. 5-3), because its *raison d'être* is essentially related to the requirements of an investigation which is to be conducted with expedition. In the present case an interval of one month is not unreasonable.

The Government stress further that the applicant could have contested the decision of 6 June by lodging an appeal (Article 272 bis of the Code of Criminal Procedure), or by directly instituting proceedings before the Tribunale della Libertà (a court with jurisdiction to hear questions relating to detention on remand - Article 263 bis; see paragraph 26 of the Commission's report), rather than making, as early as 6 July, a further application to the investigating judge for his release.

This argument disregards the fact that the application lodged on that date (see paragraph 19 above) also sought investigative measures. For Mr Bezicheri, these measures were intended to show the lack of any plausible grounds for keeping him in prison; he could not have achieved this by the two other procedures referred to by the Government.

Furthermore, the simultaneous or successive use of two procedures, which were legally distinct but ultimately directed towards the same end, could have resulted in a loss of time that would scarcely have been consistent with the requirement that proceedings be conducted "speedily" and would in any event have been contrary to the applicant's interests.

22. On the question of observance by the "court" concerned of the requirement that proceedings be conducted "speedily", the Court will first examine the period, of approximately five and a half months, running from the lodging of the application of 6 July 1983 to its dismissal by the investigating judge on the following 22 December (see paragraph 11 above).

23. In the Commission's view, the proceedings were not conducted "speedily".

In order to refute this opinion, the Government state in the first place that the investigating judge showed diligence well before 12 October 1983, the date on which according to the Commission, basing its view on information provided to it by the parties, the first of the measures requested by the applicant was completed (see paragraphs 20 and 47 of the report).

This fact does not invalidate the Commission's opinion because the investigating judge took far fewer steps before 12 October 1983 than after that date (see the second sub-paragraph of paragraph 11 above).

24. In the Government's view, the delay established in this case is justified by the hybrid nature of the application of 6 July 1983 and by the number and complexity of the investigative measures whose execution was obtained by the applicant.

The Court accepts, like the Commission, that the judge to whom the case was assigned required a certain amount of time to carry out the necessary enquiries. However, these investigations were spread out over a period whose overall length is incompatible with Article 5 para. 4 (art. 5-4).

25. Again in the Government's opinion, the investigating judge suffered from an excessive workload at the material time. Accordingly, he could not be criticised for having initially limited his activity in the Bezicheri case in order to concentrate on other cases which were numerous and sensitive and certain of which also concerned accused persons held in detention.

The Court notes that the Convention requires the Contracting States to organise their legal systems so as to enable the courts to comply with its various requirements (see, amongst other authorities, with regard to the "reasonable time" requirement in Article 6 para. 1 (art. 6-1), the Milasi judgment of 25 June 1987, Series A no. 119-C, p. 46, para. 18).

26. It follows from the foregoing that the examination of the application of 6 July 1983 by the investigating judge was not effected "speedily" as is required under Article 5 para. 4 (art. 5-4). This conclusion makes it unnecessary for the Court to consider in addition the subsequent proceedings before the Pisa Regional Court and the Court of Cassation (see paragraphs 12-13 above).

II. THE OTHER ALLEGED VIOLATIONS

27. The applicant repeated some of the complaints which the Commission had found inadmissible on 4 March 1987 (see paragraphs 15-16 above) and raised new complaints, but the Court lacks jurisdiction to hear them because they fall outside the limits laid down in the decision as to admissibility (see, inter alia, the Bozano judgment of 18 December 1986, Series A no. 111, p. 27, para. 62, and the Soering judgment of 7 July 1989, Series A no. 161, p. 46, para. 115).

III. APPLICATION OF ARTICLE 50 (art. 50)

28. The applicant claimed just satisfaction under Article 50 (art. 50), according to which

"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."

Mr Bezicheri has brought an action for damages in the national courts. However, according to the information he provided to the Court this concerns the lawfulness of his detention on remand, a question which falls outside the scope of the present judgment, and not the delay in hearing his application for release of 6 July 1983. It is not therefore necessary to stay the decision on this matter as the Government have urged.

A. Damage

29. In the first place Mr Bezicheri sought 270,000,000 lire in respect of pecuniary damage. However, since he based this claim on circumstances unrelated to the breach of Article 5 para. 4 (art. 5-4), the Court cannot entertain it.

He also claimed 1,650,000,000 lire for non-pecuniary damage. The

Court accepts that the failure to conduct the proceedings "speedily" must have caused him some degree of non-pecuniary damage. However, the finding that the requirements of the Convention were not complied with constitutes in this case adequate just satisfaction in this respect.

B. Costs and expenses

30. The applicant waived his right to recover the costs and expenses borne by him before the Commission and the Court. On the other hand, he considers that he is entitled to the payment of 80,000,000 lire in respect of the fees of the lawyers who defended him before the national courts. It appears however that this claim is not related in any way to the proceedings concerning the examination of his application of 6 July 1983, which alone is the subject of the case before the Court.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 5 para. 4 (art. 5-4) of the Convention;
2. Holds that it lacks jurisdiction to examine the applicant's other complaints;
3. Dismissing the claim for compensation for damage and for the reimbursement of costs and expenses,

Holds that the present judgment in itself constitutes adequate just satisfaction for the purposes of Article 50 (art. 50).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 October 1989.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar

A declaration by Mr Pinheiro Farinha is annexed to the present judgment.

Initialled: R.R.

Initialled: M.-A.E.

DECLARATION BY JUDGE PINHEIRO FARINHA

(Translation)

I accept the wording of paragraph 21, but I consider that "strictly limited duration" means "as short as possible".