



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

COURT (CHAMBER)

CASE OF CORIGLIANO v. ITALY

(Application no. 8304/78)

JUDGMENT

STRASBOURG

10 December 1982

In the Corigliano case,

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. G. WIARDA, *President*,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. D. EVRIGENIS,
Mr. J. PINHEIRO FARINHA,
Sir Vincent EVANS,
Mr. C. RUSSO,
Mr. R. BERNHARDT,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 22 and 23 April, 25 June and 22 and 23 November 1982,

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

PROCEDURE

1. The Corigliano case was referred to the Court by the European Commission of Human Rights ("the Commission"). The case originated in an application (no. 8304/78) against the Italian Republic lodged with the Commission on 20 July 1978 under Article 25 (art. 25) of the Convention by an Italian national, Mr. Clemente Corigliano.

2. The Commission's request was lodged with the registry of the Court on 20 July 1981, within the period of three months laid down by Articles 32 § 1 and 47 (art. 32-1, art. 47). The request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the Italian Republic recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request is to obtain a decision as to whether or not the facts of the case disclose a breach by the respondent State of its obligations under Article 6 § 1 (art. 6-1).

3. By Order dated 20 July 1981, the President of the Court referred the Corigliano case to the Chamber constituted to hear the case of Foti and others (Rule 21 § 6 of the Rules of Court). This Chamber included, as ex

* Note by the registry: In this volume, the Rules of Court referred to are those in force at the time proceedings were instituted. These Rules have been replaced by a revised text that came into operation on 1 January 1983, but only in respect of cases brought before the Court after that date.

officio members, Mr. C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, President of the Court (Rule 21 § 3 (b)). The five other members, chosen by lot on 30 May 1981, were Mrs. D. Bindschedler-Robert, Mr. D. Evrigenis, Mr. J. Pinheiro Farinha, Mr. E. García de Enterría and Sir Vincent Evans (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

4. Mr. Wiarda, who had assumed the office of President of the Chamber (Rule 21 § 5), ascertained, through the Registrar, the views of the Agent of the Italian Government ("the Government") and of the Delegate of the Commission regarding the procedure to be followed. On 6 August 1981, he directed that the time-limits granted to the Agent and the Delegate under the Order of 15 June 1981 in the case of Foti and others should also apply to the Corigliano case. The Agent accordingly had until 31 October 1981 to lodge a memorial and the Delegate was entitled to reply in writing within two months from the date of the transmission of the Government's memorial to him by the Registrar.

On 3 November, the President extended the first of these time-limits to 16 November. The official French text of the Government's memorial was filed at the registry on 23 November.

5. On 21 January 1982, the Secretary to the Commission informed the Registrar that the Delegate would present his observations at the hearings.

6. On 4 February, having consulted, through the Registrar, the Agent of the Government and the Delegate of the Commission, the President directed that the oral proceedings should open on 21 April.

7. The hearings were held in public on 21 April at the Human Rights Building, Strasbourg. Immediately before their opening, the Chamber had held a preparatory meeting and had authorised the use of Italian by the person assisting the Delegate of the Commission (Rule 27 § 3).

There appeared before the Court:

- for the Government

Mr. C. ZANGHI,

Delegate of the Agent;

- for the Commission

Mr. E. BUSUTIL,

Delegate,

Mr. C. CORIGLIANO, applicant,

assisting the Delegate (Rule 29 § 1, second sentence, of the Rules of Court).

The Court heard their submissions and statements as well as their replies to its questions.

8. On various dates between 15 December 1981 and 17 August 1982, the Registrar received from the Commission and the Government, respectively, several documents and items of information requested by or on behalf of the Chamber or provided by the Commission or the Government on their own initiative. This material included two letters from the applicant to the Commission (23 April and 20 May 1980), the memorials of the

Government to the Commission (March 1979, January and May 1980) and the verbatim record of the hearing on 12 December 1980 before the Commission.

9. At the deliberations held on 22 and 23 November 1982, Mr. R. Bernhardt, first substitute judge, replaced Mr. E. García de Enterría, who was prevented from attending (Rules 22 § 1 and 24 § 1).

AS TO THE FACTS

10. As to the exact dates of the facts, there are uncertainties and gaps in the evidence in the case- file which the efforts of the Court, and in particular the questions it put to the persons appearing before it, have not entirely succeeded in removing. Subject to that reservation, the facts may be summarised as follows:

11. Mr. Clemente Corigliano, an Italian national born in 1921, lives in Reggio Calabria, where he practises as a lawyer.

12. In March 1973, during demonstrations in Reggio, the police arrested Mr. Santo Amodeo in a shop belonging to Mr. Corigliano and in the latter's presence.

On 29 March, the applicant gave evidence at Mr. Amodeo's trial before the Reggio Regional Court. His evidence directly contradicted that of the police officers who had made the arrest. The Court upheld their version of the facts.

On 2 April, Mr. Corigliano lodged a complaint with the Reggio public prosecutor's office (*pubblico ministero*) against two judicial officers in that town: Mr. Giuseppe Viola, President of the Criminal Chamber of the Regional Court, and Mr. Francesco Colicchia, assistant public prosecutor (*sostituto procuratore della Repubblica*); he accused them of various offences, in particular of having acted out of personal interest in the exercise of their duties and having deliberately failed to declare that the police report of the arrest was false.

13. Having been informed of the complaint, the public prosecutor (*procuratore della Repubblica*) decided to commence proceedings (*elevava rubrica*) against the applicant for aggravated slander (Articles 368 and 81 of the Penal Code). He did not, however, notify Mr. Corigliano of this.

On 21 April 1973, he requested the Court of Cassation to remit the case to another court; he relied on Article 60 - amended by Act no. 879 of 22 December 1980 - of the Code of Criminal Procedure, sub-paragraph 1 of which provided that (translation from the Italian):

"Where criminal proceedings are instituted against, or where an offence has been committed against, a judge or a member of the public prosecutor's office, and the proceedings fall within the jurisdiction of the judicial institution to which he is

attached, the Court of Cassation shall refer the case to another court of similar jurisdiction."

On 8 May, the public prosecutor (procuratore generale) attached to the Catanzaro Court of Appeal sent the case-file to the Court of Cassation, which by order of 2 July 1973 referred the case to the Messina Regional Court.

14. Mr. Corigliano received judicial notification (comunicazione giudiziaria) on 7 December 1973 that criminal proceedings had been brought against him under Articles 368 and 81 of the Penal Code and that he was entitled to appoint a defence lawyer within three days.

1. The investigation proceedings

15. There were two stages in the investigation of the case : the first ended in a discharge and the second - following an appeal by the public prosecutor's office - in the applicant's committal for trial.

(a) First stage

16. During the initial stage of the investigation, Mr. Corigliano on three occasions challenged the jurisdiction of the Messina Regional Court before the Court of Cassation.

On 11 January 1974, he alleged that all the procedural acts to date were void. This first appeal on a point of law was held to be inadmissible on 22 March.

On 3 February 1975, the applicant brought a second cassation appeal, alleging a conflict of jurisdiction between the Regional Courts of Messina and Potenza, where other proceedings were pending against him. The Court of Cassation declared the appeal inadmissible on 3 October.

On 5 October 1975, Mr. Corigliano brought a third cassation appeal, seeking to join the proceedings pending against him in Messina and Potenza. On 16 October, he was informed that his appeal had not been registered and that the joinder of proceedings fell within the exclusive jurisdiction of the trial court (Article 48 of the Code of Criminal Procedure).

17. The public prosecutor's office in Messina originally conducted the investigation of the case itself in accordance with the "summary" procedure (Article 389 of the Code of Criminal Procedure). It heard the applicant, Mr. Viola and Mr. Colicchia on 17 December 1973. Following Mr. Corigliano's refusal to appoint a defence lawyer, the public prosecutor's office forwarded the case-file on 18 December to the competent judge so that the latter could carry out a "formal" preliminary investigation.

On 22 April 1975, the case-file was sent back to the Reggio Calabria Regional Court so that evidence could be taken from the applicant on commission. On 5 June, that Court declared that it lacked jurisdiction and returned the case-file to the Messina Regional Court. On 21 June and then

on 12 December, Mr. Corigliano was summoned to appear before the Messina investigating judge, who questioned him on 26 June and 22 December 1975.

18. On 19 February 1977, the file was transmitted to the public prosecutor's office which asked for further investigation to be carried out. On 2 March, it requested a copy of the judgment delivered on 29 March 1973 by the Reggio Calabria Regional Court against Mr. Amodeo; this was received on 31 March. On 9 April, it sought a further hearing of the judicial officers complained of by the applicant; Mr. Colicchia was heard on 16 June. The report of Mr. Amodeo's arrest, also at the request of the public prosecutor's office, was forwarded by the Reggio police authorities on 9 January 1978 and entered in the case-file.

Finally, on 11 January, the public prosecutor's office requested the investigating judge to hear the police officer who had drawn up the report and had gone to live in Caserta in the meantime; he was heard on 20 January.

On the same day, the judge sent the case-file to the public prosecutor's office so that the latter could present its final submissions. They were presented on 6 February.

The investigating judge issued an order discharging the applicant which was filed at the registry on 2 March; on 13 March 1978, the case-file was sent to the public prosecutor's office.

(b) Second stage

19. On 16 March 1978, the public prosecutor's office appealed against this order (Article 387 of the Code of Criminal Procedure). The applicant was notified on 28 March. The "grounds of appeal" were entered on 4 April and the following day the case-file was forwarded to the investigation chamber of the Messina Court of Appeal. The latter decided on 7 July to commit the accused for trial; its decision was lodged in the registry on 11 July 1978.

2. Trial proceedings

(a) Proceedings before the court of first instance

20. On 7 August 1978, the file was transmitted to the Messina Regional Court. On 6 February 1979, the applicant received a summons to appear at the hearing on 30 March.

At the conclusion of the hearing, the Regional Court gave him a suspended sentence of eighteen months' imprisonment.

(b) Appeal proceedings

21. The applicant appealed on the same day. The Appeal Court of Messina, which had received the file on 18 June 1979, acquitted the applicant at a hearing on 19 February 1980.

PROCEEDINGS BEFORE THE COMMISSION

22. On 29 October 1973, Mr. Corigliano lodged a first application (no. 6481/74) in which he complained, *inter alia*, of the rejection of his challenge of a judge, and of criminal proceedings instituted against him for the aggravated slander of a judicial officer. The Commission declared it inadmissible on 12 December 1974 on the ground that it was incompatible with the provisions of the Convention and was manifestly ill-founded (Article 27 § 2 of the Convention) (art. 27-2).

In a second application, lodged on 21 June 1975 (no. 7223/75), Mr. Corigliano relied on Articles 6 and 13 (art. 6, art. 13) of the Convention: he complained of two judgments of the Court of Cassation, one rejecting an objection that Articles 65, first paragraph, and 66, first paragraph, of the Code of Criminal Procedure were unconstitutional, and the other finding that the applicant did not have a personal right to the proper administration of justice but merely a "legitimate interest". This application was declared inadmissible by the Commission on 16 May 1977 on the ground that it was incompatible with the provisions of the Convention.

23. The third application, lodged on 20 July 1978 (no. 8304/78), referred to the two previous applications and sought to establish that it contained relevant new information within the meaning of Article 27 § 1 (b) (art. 27-1-b) of the Convention. Mr. Corigliano alleged a two-fold violation of Article 6 § 1 (art. 6-1): the investigation chamber of the Messina Court of Appeal was not "an independent and impartial tribunal established by law", as one of its members had sat on the Reggio Calabria Regional Court at the same time as Judge Viola; and the "reasonable time" had been exceeded.

On 2 October 1979, the Commission declared the application admissible in so far as it concerned the length of the proceedings.

The applicant wrote in a letter of 23 April 1980 to the Commission that he wished to withdraw his application, but, on 20 May, stated that he was retracting his withdrawal. On 17 July, the Commission decided to continue its examination of the case.

In its report of 16 March 1981 (Article 31 of the Convention) (art. 31), it expressed the unanimous opinion that there was a violation of Article 6 § 1 (art. 6-1).

AS TO THE LAW

I. PRELIMINARY OBJECTIONS

24. The Government pleaded three preliminary objections.

A. Objection based on Article 27 § 1 (b) (art. 27-1-b) of the Convention

25. The first objection was based on Article 27 § 1 (b) (art. 27-1-b) of the Convention. According to this objection, application no. 8304/78 from Mr. Corigliano was "substantially the same" as his previous applications nos. 6481/74 and 7223/75, which had been declared inadmissible by the Commission on 12 December 1974 and 16 May 1977 respectively (see paragraph 22 above), and it contained no "relevant new information".

26. The Court will take cognisance of preliminary objections of this kind in so far as the respondent State may have first raised them before the Commission, in principle at the stage of the initial examination of admissibility, to the extent that their character and the circumstances permitted; if this condition is not fulfilled, the Government are estopped from raising the objection before the Court (see, *inter alia*, the Artico judgment of 13 May 1980, Series A no. 37, pp. 12-14, §§ 24 and 27, and the Guzzardi judgment of 6 November 1980, Series A no. 39, p. 24, § 67).

27. Although the Commission's report makes no mention of this, the Government invoked Article 27 § 1 (b) (art. 27-1-b) before the Commission. However, they did so only after the admissibility decision of 2 October 1979, in written observations of 28 January and 3 May 1980 and, subsequently, at the hearings on 12 December 1980. However, nothing would have prevented them from praying in aid this provision in their earlier memorial of March 1979, since they had learnt of the first two applications, as well as their rejection, at the latest in the month of October 1978 when the Commission notified them of the third application in pursuance of Rule 42 § 2 (b) of its Rules of Procedure (see paragraph 23 above). Moreover, the Government acknowledged this before the Commission (see page 1 of the verbatim record of the hearings on 12 December 1980) and before the Court (see paragraphs 3 and 10 of the memorial of November 1981 and the oral submissions made on 21 April 1982), without advancing any reasons to justify a departure by the Court from its established case-law (see the above-mentioned references from the Artico and Guzzardi judgments).

The Court, concurring with the Delegate of the Commission, thus concludes that there is estoppel.

B. Objection as to non-exhaustion of domestic remedies

28. Secondly, the Government pleaded non-exhaustion of domestic remedies (Article 26) (art. 26). Before the national authorities, so the Government contended, citing the Van Oosterwijck judgment of 6 November 1980 (Series A no. 40, pp. 15-17, §§ 30, 31 and 33), the applicant had omitted to rely on Article 6 § 1 (art. 6-1), notwithstanding the direct applicability of that provision in Italian law. Nor had he requested the national authorities to expedite the proceedings or, in the unlikely event of such action proving fruitless, attempted to establish liability on the part of those authorities under Article 328 of the Penal Code taken in conjunction with Articles 55, 56 and 74 of the Code of Civil Procedure.

29. The objection in question was not put to the Commission until after the admissibility decision of 2 October 1979. The second ground (Article 328 of the Penal Code and Articles 55, 56 and 74 of the Code of Civil Procedure) was put forward by the Government in their written observations of 28 January and 3 May 1980 and then at the hearings on 12 December 1980. The first ground (direct applicability of Article 6 § 1 of the Convention) (art. 6-1), which is not referred to in the Commission's report, had also been raised before the Commission, but only at the above-mentioned hearings.

Yet, as they moreover conceded (see paragraph 27 above), the Government could have raised the issue in their memorial of March 1979, especially in view of the fact that from the very outset (20 July 1978) Mr. Corigliano had alleged that the "reasonable time" had been exceeded.

Accordingly, in regard to this objection too, there is estoppel.

C. Objection that the applicant could not be regarded as a "victim" within the meaning of Article 25 § 1 (art. 25-1)

30. Thirdly, the Government submitted that the applicant's real aim was not to speed the course of the prosecution brought against him but rather to avoid being convicted, and that in reality compliance with the "reasonable time" requirement was not a source of genuine concern to him. The letter of 23 April 1980 stating his wish to withdraw his application (see paragraph 23 above) afforded proof of this, in that Mr. Corigliano gave as the reason the disappearance of the object of the dispute (*materia del contendere*) as a result of his acquittal on 19 February 1980 by the Messina Court of Appeal (see paragraph 21 above). Although he retracted his letter of withdrawal shortly thereafter on 20 May 1980 (see paragraph 23 above), he did so solely on account of the institution of a fourth set of proceedings against him, which, so the Government pointed out, clearly had "nothing to do with the length" of the third set. Consequently, in the Government's submission, he lacked the status of "victim" within the meaning of Article 25 (art. 25).

31. This argument was not a new one, the Government having already put it forward, at least in substance, before the Commission. Admittedly, they did so only after the admissibility decision of 2 October 1979, during the hearings on 12 December 1980 (see pages 9-10, 54 and 63-64 of the verbatim record), but their action is easily explicable since the above-mentioned letters of 23 April and 20 May 1980 were themselves later in date than the admissibility decision.

Although for this reason the Government are not estopped from raising their third preliminary objection, it nevertheless cannot be upheld by the Court. According to the Court's well-established case-law, the word "victim" in Article 25 (art. 25) denotes the person directly affected by the act or omission in issue, the existence of a violation being conceivable even in the absence of prejudice; prejudice is relevant only in the context of Article 50 (art. 50) (see, as the most recent precedent, the Eckle judgment of 15 July 1982, Series A no. 51, p. 30, § 66). Here, it is undeniable that the duration of the proceedings in question directly affected Mr. Corigliano, albeit doubtless not constituting one of his major sources of concern.

II. MERITS

A. The alleged breach of article 6 § 1 (art. 6-1)

32. The Commission expressed the opinion that the applicant had been the victim of a breach of his right to a hearing "within a reasonable time", within the meaning of Article 6 § 1 (art. 6-1).

The Government disagreed with this view.

1. The length of the proceedings

33. The first matter that must be determined is the relevant period to be considered.

(a) Commencement of the period to be taken into account

34. In criminal matters, in order to assess whether the "reasonable time" requirement contained in Article 6 § 1 (art. 6-1) has been complied with, one must begin by ascertaining from which moment the person was "charged"; this may have occurred on a date prior to the case coming before the trial court (see, for example, the Deweer judgment of 27 February 1980, Series A no. 35, p. 22, § 42), such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when the preliminary investigations were opened (see the Wemhoff judgment of 27 June 1968, Series A no. 7, pp. 26-27, § 19, the Neumeister judgment of the same date, Series A no. 8, p. 41, § 18, and the Ringeisen

judgment of 16 July 1971, Series A no. 13, p. 45, § 110). Whilst "charge", for the purposes of Article 6 § 1 (art. 6-1), may in general be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", it may in some instances take the form of other measures which carry the implication of such an allegation and which likewise substantially affect the situation of the suspect (see, inter alia, the above-mentioned Eckle judgment, Series A no. 51, p. 33, § 73).

35. The commencement of the proceedings in issue dates back to April 1973. On 21 April, the Reggio Calabria public prosecutor, having had referred to him the complaints made by the applicant against two judicial officers, requested the Court of Cassation to remit the case to another jurisdictional area; he did not inform Mr. Corigliano. Without hearing either the prosecuting authorities or the defence, the Court of Cassation made an order to this effect on 2 July, confining itself to specifying the town in question (Article 60 of the Code of Criminal Procedure - see paragraph 13 above).

The "judicial notification" issued by the public prosecutor attached to the Messina Regional Court was served on the applicant on 7 December 1973 (see paragraph 14 above). "Judicial notification" is an act of process recently introduced under Italian law, which is intended to give the person affected official notice of the commencement of criminal proceedings against him and of his entitlement to appoint a defending lawyer within three days. For his part, Mr. Corigliano did not contest that he learnt only on 7 December 1973 of the bringing of a prosecution against him. The Court takes this latter date as the date from which there was a "charge" within the meaning of Article 6 § 1 (art. 6-1).

(b) End of the period to be taken into account

36. The end of the period of "time" to be taken into account fell on the day the Messina Court of Appeal rendered the final judgment of acquittal, that is on 19 February 1980 (see paragraph 21 above and the above-mentioned Eckle judgment, Series A no. 51, p. 34, § 76).

2. The reasonableness of the length of the proceedings

37. The reasonableness of the length of the proceedings has to be assessed in each instance according to the particular circumstances. In this exercise, the Court has regard to, amongst other things, the complexity of the case, the conduct of the applicant and the conduct of the judicial authorities (see the above-mentioned Eckle judgment, *ibid.*, p. 35, § 80).

The present case concerns proceedings that extended more than six years. This would, at first sight, appear to be a considerable lapse of time for a case of this kind.

(a) The complexity of the case

38. In the submission of the Government, the case did involve a certain complexity as a result of its having to be remitted to a court other than the one to which Mr. Viola and Mr. Colicchia were attached.

39. Doubtless the transferral of jurisdiction to Messina did make the conduct of the case a little more complicated, but, in the opinion of the Court, the legal issues involved were in themselves relatively simple. It is noteworthy in this connection that the only measures of investigation carried out seem in fact to have been the questioning of the judicial officers complained of by Mr. Corigliano, of Mr. Corigliano himself and of one witness, as well as the examination of a number of documents (see paragraphs 17 and 18 above).

(b) The conduct of the applicant

40. As regards the conduct of the applicant, the Government contended that there had been abuse by the applicant of his right to appeal on a point of law to the Court of Cassation (see paragraph 16 above) - notably in respect of his last two appeals - since each time the outcome was foreseeable. In their submission, Mr. Corigliano had also protracted the proceedings by refusing, on 17 December 1973, to appoint a defence lawyer on the occasion of his being heard by the public prosecutor's office (see paragraph 17 above).

41. On the first point, the applicant conceded that his three cassation appeals pursued substantially the same object, namely to bring to the attention of the Court of Cassation the alleged unconstitutionality of Article 48 of the Code of Criminal Procedure, which deals with joinder of cases relating to the same accused.

The Court sees no call to adjudicate on whether or not there was abuse of the right to appeal on a point of law; it confines itself to noting, as did the Commission (see paragraphs 43-44 of the report), that the effect of the cassation appeals on the length of the proceedings was limited. In point of fact, those appeals did not impede the preliminary investigation as was maintained by the Government. The appeal that required the longest time to be heard - the second - did not at all bring the activities of the Messina Regional Court to a standstill. This is borne out by the various measures that were taken in the meantime, namely the forwarding of the case-file to the Reggio Calabria Regional Court (22 April 1975), the serving of a summons to appear (21 June 1975) and the questioning of the applicant (26 June 1975) (see paragraph 17 above).

42. On the second point (refusal to designate a defence lawyer), it should be recalled that Article 6 (art. 6) does not require the person concerned actively to co-operate with the judicial authorities (see the above-mentioned Eckle judgment, Series A no. 51, p. 36, § 82).

43. To sum up, the behaviour of Mr. Corigliano did not appreciably contribute to prolonging the proceedings.

(c) The conduct of the judicial authorities

44. The manner in which the judicial authorities conducted the case is to be assessed by reference to three successive stages, namely the preliminary investigation; the trial at first instance and the hearing on appeal (see paragraphs 17-21 above).

(i) The preliminary investigation

45. The first phase of the proceedings began on 17 December 1973 and ended on 7 July 1978 with the committal for trial (see paragraphs 35 and 19 above); it thus lasted four years and seven months. The Government attributed this length of time to the cassation appeals entered by the applicant during the preliminary investigation and to the complexity of the case (see paragraphs 40 and 38 above).

46. The time devoted to hearing the cassation appeals was not excessive. Thus, the first was dismissed by the Court of Cassation after two months and ten days (11 January 1974 - 22 March 1974), the second after eight months (3 February 1975 - 3 October 1975). The third appeal was not even registered by the Court of Cassation, which informed the applicant accordingly eleven days later (5 October 1975 - 16 October 1975).

47. The Court has already noted that the case did not involve great complexity (see paragraph 39 above). The Court would add that although the transferral of the case to the Messina Regional Court was not in itself incompatible with the proper administration of justice and although the normally resultant delays should not therefore be capable of raising an issue under Article 6 § 1 (art. 6-1), it is difficult to understand one decision entailing a delay of seven weeks (22 April - 5 June 1975), namely the decision to take evidence from Mr. Corigliano on commission at the Reggio Regional Court notwithstanding the removal of the case from the latter's jurisdiction by the Court of Cassation (see paragraph 17 above).

What also calls for comment is the absence of any measures of preliminary investigation during two periods, the first of thirteen months, the second of fourteen months (22 March 1974 - 22 April 1975 and 22 December 1975 - 19 February 1977, see paragraphs 16-18 above). The Government not having come forward with any explanation in their respect, the Court holds these two delays to be unjustified.

(ii) The proceedings before the Messina Regional Court

48. The procedure at first instance lasted approximately seven months: it commenced before the Messina Regional Court on 7 August 1978 and ended on 30 March 1979. The time taken does not appear unduly long,

especially in view of the fact that it began to run during the legal vacation which terminated on 15 September.

(iii) The proceedings before the Messina Court of Appeal

49. The Messina Court of Appeal, following the reference of the case to it on 30 March 1979, received the case-file on 18 June 1979. Whilst the transmission of the case-file thus did not occur until after two and a half months, it should not be overlooked that the applicant had had twenty days for filing the grounds of his appeal (Article 201 § 1 of the Code of Criminal Procedure). In addition, with judgment being delivered by the Court of Appeal on 19 February 1980, the procedure lasted a total of less than eleven months. The time taken appears reasonable, particularly in view of the fact that the accused was not being held in custody and that the consideration of his case, since it involved no urgency, could be interrupted during the legal vacations.

(d) Conclusion

50. To sum up, at the stage of the preliminary investigation at Messina the proceedings brought against Mr. Corigliano were subject to delays incompatible with Article 6 § 1 (art. 6-1).

B. The application of article 50 (art. 50)

51. At the public hearings, the applicant submitted a claim for just satisfaction under Article 50 (art. 50) in the event of the Court finding a violation. He requested the Court to recommend the Italian Government to make Article 368 of the Italian Penal Code inapplicable to "political and/or social trials" and to direct the Government to pay both "just compensation for the moral and material prejudice suffered" and "just reimbursement of the costs and fees".

52. According to the Agent of the Government, the request in respect of Article 368 of the Penal Code, which makes it a punishable offence to utter slander, could not be of relevance. The claim for compensation and reimbursement, he further argued, was devoid of object, the applicant having stated in his letter of 23 April 1980 to the Commission that he had received satisfaction with his acquittal by the Messina Court of Appeal and was withdrawing his application.

53. The Court considers that the matter is thus ready for decision (Rule 50 § 3 of the Rules of Court).

As to the claim concerning Article 368 of the Penal Code, it is sufficient to note that this falls completely outside the scope of the case brought before the Court in July 1981.

As to the alleged pecuniary damage, Mr. Corigliano has neither established its existence nor even indicated its nature. Furthermore, as the

Government have rightly emphasised, the facts of the case give cause to believe that observance of the "reasonable time" requirement did not constitute one of his primary concerns (see paragraphs 30-31 above). The same remark applies to the alleged non-pecuniary damage; in any event, this damage has, in the opinion of the Court, already been sufficiently repaired by the finding of a breach of Article 6 § 1 (art. 6-1) (see notably, *mutatis mutandis*, the *Le Compte, Van Leuven and De Meyere* judgment of 18 October 1982, Series A no. 54, p. 8, § 16).

The only legal costs possibly recoverable are those that Mr. Corigliano might have incurred in order to try to prevent the violation found by the Court or to obtain redress therefore (see the above-mentioned *Le Compte, Van Leuven and De Meyere* judgment, *ibid.*, p. 8, § 17). However, he incurred no such costs in Italy, and before the Convention institutions he argued his case in person. On the other hand, he is entitled to reimbursement of the travel and subsistence expenses he had to meet in attending the hearings on 12 April 1980 before the Commission and on 21 April 1982 before the Court, these expenses not having been borne by the Council of Europe (see the above-mentioned *Le Compte, Van Leuven and De Meyere* judgment, *ibid.*, pp. 9-10 and 11, §§ 21 and 25). An equitable assessment of these expenses would be 2,200,000 Lire.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares that the Government are estopped from relying on Article 27 § 1 (b) (art. 27-1-b) of the Convention and the rule of exhaustion of domestic remedies;
2. Rejects the Government's objection that the applicant could not be regarded as a victim within the meaning of Article 25 § 1 (art. 25-1);
3. Holds that there has been a breach of Article 6 § 1 (art. 6-1) to the extent specified in paragraphs 47 and 50 of the reasons;
4. Declares inadmissible the claim for just satisfaction in so far as it relates to Article 368 of the Italian Penal Code;
5. Rejects the said claim in so far as it seeks monetary compensation for the alleged pecuniary and non-pecuniary damage;
6. Holds that the Italian Republic is to pay to the applicant, in respect of his travel and subsistence expenses in coming to Strasbourg, the sum of two million two hundred thousand (2,200,000) Lire.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, this tenth day of December, one thousand nine hundred and eighty-two.

For the President
Rudolf BERNHARDT
Judge

Marc-André EISSEN
Registrar