

In the Milasi case*,

* Note by the Registrar: The case is numbered 14/1986/112/160. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

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. J. Cremona,
Mrs. D. Bindschedler-Robert,
Mr. F. Matscher,
Mr. L.-E. Pettiti,
Mr. C. Russo,
Mr. J. Gersing,

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

Having deliberated in private on 31 January and 19 May 1987,

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

PROCEDURE

1. The present case was brought before the Court by the European Commission of Human Rights ("the Commission") on 13 March 1986, within the three-month period laid down in Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 10527/83) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by Mr. Elio Milasi, who is an Italian national, on 18 July 1983.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the Italian declaration recognising the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision from the Court as to whether or not the facts of the case disclosed a breach by the respondent State of one of its obligations under Article 6 § 1 (art. 6-1).

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

3. On 17 March 1986, the President of the Court decided that one and the same Chamber of seven judges should consider the Capuano, Baggetta and Milasi cases (Rule 21 § 6). The Chamber included, as ex officio members, 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 § 3 (b)). On 19 March 1986, the President of the Court drew by lot, in the presence of the Registrar, the names of the other five members, namely Mr. J. Cremona, Mrs. D. Bindschedler-Robert, Mr. F. Matscher, Mr. L.-E. Pettiti and Mr. J. Gersing (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

4. Mr. Ryssdal assumed the office of President of the Chamber (Rule 21 § 5). Having consulted, through the Registrar, the Agent of the Italian Government ("the Government"), the Commission's Delegate and the applicant's lawyer, he decided on 2 April that there was no need for memorials to be filed at this stage (Rule 37 § 1).

Nevertheless, between 21 April and 10 September 1986, the Registrar received the applicant's claims for just satisfaction and observations on the matter from the Government and the Commission's Delegate. On the President's instructions he also requested the Commission to produce a number of documents; these were supplied on 25 April and 23 May 1986.

On 4 April 1986, the President gave the applicant leave to use the Italian language (Rule 27 § 3).

5. On 28 November 1986, after consulting, through the Registrar, the Agent of the Government, the Commission's Delegate and the applicant's lawyer, the President directed that the oral proceedings should open on 26 January 1987 (Rule 38).

6. The hearings were held 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:

- for the Government

Mr. L. Ferrari Bravo, Head of the Diplomatic Legal
Service of the Ministry of Foreign
Affairs,

Agent,

Mr. D. Striani, avvocato,

Mr. G. Grasso, avvocato,

Mrs. L. Bianchi, magistrato,

Counsel;

- for the Commission

Mr. A. Weitzel,

Delegate;

- for the applicant

Mr. C. Corigliano, avvocato,

Mr. R.G. Milasi, avvocato,

Counsel.

The Court heard addresses by Mr. Ferrari Bravo, Mr. Grasso and Mrs. Bianchi for the Government, by Mr. Weitzel for the Commission and by Mr. Corigliano and Mr. Milasi for the applicant, as well as their replies to its questions.

On 23 and 26 January, the applicant and the Government filed a number of documents requested by the Court.

AS TO THE FACTS

7. Mr. Elio Milasi, who was born in 1953, lives in Reggio Calabria. On 17 May 1973, the police laid an information against him and thirty-four other people before the public prosecutor's office in that city alleging criminal association (Article 416 of the Criminal Code). The information related to Mr. Milasi's having taken part, as a member of a political movement with undemocratic aims, in disturbances and acts of violence in Reggio from October 1969

to May 1973.

8. On 18 June 1973, the public prosecutor's office informed the applicant that criminal proceedings were being instituted against him. On 6 April 1974, the office asked the investigating judge to open a full formal investigation. The judge questioned Mr. Milasi on 9 March 1978 and, on 3 November 1978, requested the public prosecutor's office to make its final submissions. These were filed on 30 November 1978. The investigating judge committed Mr. Milasi and his co-defendants for trial on 9 January 1980. On 31 March, the presiding judge of the Reggio District Court summoned them to appear before his court on 23 April 1980. However, the trial was adjourned, as a mark of respect for a public prosecutor who had recently died.

9. After being relisted, the trial began on 6 July 1981. The District Court held several hearings, amended the charge of criminal association to one of re-establishing the Fascist party and then, on 7 March 1983, gave judgment; it acquitted Mr. Milasi on the ground that he was covered by an amnesty under the terms of Presidential Decree no. 413 of 4 August 1978. The judgment was filed with the registry of the court on 6 April 1983.

10. In 1978, whilst the case was under investigation, the applicant had applied to enter a competition to recruit middle-ranking officers to the Guardia di finanza (Revenue Police), who, in the course of their enquiries about him, became aware of the criminal proceedings. On 1 March 1979, they asked the investigating judge's office for a certificate to the effect that Mr. Milasi had been committed for trial for an offence contrary to Article 416 of the Criminal Code, stating that they needed the certificate for appending to a ministerial decree excluding the applicant from the competition. Such a decree was never issued, however, as the applicant had not sat the written examination held on 13 January 1979.

PROCEEDINGS BEFORE THE COMMISSION

11. Mr. Milasi applied to the Commission on 18 July 1983 (application no. 10527/83). He alleged a breach of Article 15 (art. 15) of the Convention; he also complained of the length of the criminal proceedings against him.

12. On 12 March 1985, the Commission declared the second complaint admissible and the first inadmissible. In its report of 4 December 1985 (made under Article 31 of the Convention) (art. 31), it expressed the unanimous opinion that the "reasonable time" envisaged in Article 6 § 1 (art. 6-1) had been exceeded. The full text of the Commission's opinion is reproduced as an annex to this judgment.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 (art. 6-1)

13. According to the applicant, the hearing of his case had taken longer than the "reasonable time" envisaged in Article 6 § 1 (art. 6-1) of the Convention, which provides:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal"

The Government contested this allegation, whereas the Commission accepted it in substance.

A. Period to be considered

14. There was no dispute as to the period to be considered. It began not on 18 June 1973, when the applicant was informed that the

proceedings were being instituted (see paragraph 8 above), but only on 1 August 1973, when the Italian declaration recognising the right of individual petition took effect. In order to determine the reasonableness of the length of time which elapsed after that date, regard must be had, however, to the state of the case at that moment (see the Foti and Others judgment of 10 December 1982, Series A no. 56, p. 18, § 53).

The period ended on 7 March 1983, when the Reggio Calabria District Court gave judgment (see paragraph 9 above).

In sum, the period to be considered amounts to more than nine years and seven months.

B. Reasonableness of the length of the proceedings

15. The reasonableness of the length of proceedings has to be assessed according to the circumstances of the case and having regard to the criteria laid down in the Court's case-law (see, amongst other authorities, the above-mentioned Foti and Others judgment, Series A no. 56, p. 19, § 56).

No problem arises as regards the applicant's conduct, which in any event was not criticised by the Government. On the other hand, consideration has to be given to the complexity of the case, the conduct of the judicial authorities and the background against which the proceedings took place.

1. Complexity of the case

16. According to the Government, the case was complex for three reasons, namely the nature of the charges, the number of defendants and the political and social situation obtaining in Reggio Calabria at the time.

The Court observes that the charges against the accused did not raise any difficult points of law. The facts to be investigated and the procedure to be followed were somewhat complicated on account of the number of persons involved - thirty-five -, but that cannot justify a delay of nearly ten years. The Court reverts in paragraph 19 below to the third reason put forward by the Government.

2. Conduct of the judicial authorities

17. The Government prayed in aid the excessive workload which they said was borne by the Reggio Calabria District Court after the disturbances that had occurred in that town. They maintained that the authorities had endeavoured to meet this temporary and exceptional crisis by acting methodically, by giving priority to the trials of those defendants who were in custody and by appointing more judges and court staff. This was said to be demonstrated by the increase in the number of judgments delivered from 1975 to 1983.

18. The Convention places the Contracting States under a duty to organise their legal systems so as to enable the courts to comply with the requirements of Article 6 § 1 (art. 6-1), including that of trial within a "reasonable time"; nonetheless, a temporary backlog of business does not involve liability on the part of the Contracting States provided that they take, with the requisite promptness, remedial action to deal with an exceptional situation of this kind (see, for example, the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 12, § 29).

Despite the efforts made to improve the functioning of the Reggio Calabria District Court, the applicant had to wait nearly ten years before the "criminal charge" against him was the subject of a judicial determination at first instance. A period of that length cannot be

regarded as the consequence of a passing crisis.

3. Political and social background

19. The Government argued that account should also be taken of the political and social background formed by the disturbances, which allegedly obliged the authorities to take special precautions. In this connection, particular importance attached, in the Government's submission, to the fact that the delays in the proceedings were designed to defuse the situation, which fact, amongst other things, enabled the applicant to take advantage of the 1978 amnesty decree (see paragraph 9 above).

The Court has not in any way underestimated the importance of these factors, to which it also had regard in an earlier case (see the above-mentioned Foti and Others judgment, Series A no. 56, pp. 20-21, § 61). However, it does not consider that they justify a delay of nearly ten years which, moreover, continued well beyond the cessation of the disturbances in Reggio Calabria.

As for the argument based on the amnesty, it suffices to note that the District Court did not give judgment until 1983, that is five years afterwards.

4. Conclusion

20. In the light of all the circumstances of the case, the Court concludes that the applicant was not tried within a "reasonable time" and that there was accordingly a violation of Article 6 § 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

21. Article 50 (art. 50) of the Convention reads as follows:

"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."

22. The applicant sought in the first place employment in some civil-service post in the Reggio Calabria area with retrospective effect to 1973 or, in the alternative, to 1979, including the corresponding status and benefits. His lawyer specified that he was not asking the Court to direct that the Government should take any positive step, but to deliver a declaratory judgment which would give rise to a moral rather than a legal obligation and with which it would be for the Government to comply.

The Government contested this claim, on the ground that the Court did not have jurisdiction to order that they should take a specific measure such as the engagement of an individual as an employee.

Like the Commission, the Court considers that the fact that Mr. Milasi was not recruited was occasioned not by the criminal proceedings against him, but by his failure to sit the written examination forming part of the competition (see paragraph 10 above); it therefore cannot be regarded as a consequence of the violation found by the Court. There is thus no call to rule on the Government's plea of inadmissibility.

23. The applicant also sought compensation of two hundred million lire, but the Government submitted that this claim was unsupported by evidence of any causal link. In the Commission's view, Mr. Milasi had sustained non-pecuniary damage which the Court should

assess on the basis of the material before it.

The Court is of the opinion that the applicant undoubtedly suffered such damage, in that he was left in prolonged uncertainty as to the outcome of the criminal proceedings and their financial repercussions. Taking its decision on an equitable basis, as is required by Article 50 (art. 50), the Court awards the applicant seven million lire under this head.

24. Finally, Mr. Milasi sought twenty million lire for costs and expenses, in a claim which appeared to relate only to the Strasbourg proceedings. However, he had the benefit of legal aid before the Convention institutions and has supplied no details which could justify the award of any additional sums.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 § 1 (art. 6-1) of the Convention;
2. Holds that the respondent State is to pay to the applicant the sum of seven million lire (7,000,000 LIT) by way of just satisfaction;
3. Rejects the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 June 1987.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar