

In the Vallon case *,

* Note by the Registrar: The case is numbered 10/1984/82/129. 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. G. Wiarda, President,
Mr. D. Evrigenis,
Mr. G. Lagergren,
Mr. L.-E. Pettiti,
Mr. B. Walsh,
Sir Vincent Evans,
Mr. C. Russo,

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

Having deliberated in private on 28 May 1985,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 October 1984, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. The case originated in an application (no. 9621/81) against the Italian Republic lodged with the Commission on 23 October 1981 under Article 25 (art. 25) by Mr. Daniel Vallon, a French national.
2. 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 purpose of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 para. 3 and Article 6 para. 1 (art. 5-3, art. 6-1).
3. In response to the inquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, Mr. Vallon stated that he wished to take part in the proceedings pending before the Court and designated the lawyer who would represent him (Rule 30).
4. In a letter of 16 November 1984, the French authorities informed the Registrar that their Government did not wish to intervene in the proceedings (Rule 33 para. 3 (b)).
5. The Chamber of seven judges to be constituted included, as ex officio members, Mr. C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 para. 3 (b)). On 22 October 1984, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely . Mr. Thór Vilhjálmsson, Mr. D. Evrigenis, Mr. L. Liesch,

Mr. B. Walsh and Mr. R. Macdonald (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr. G. Lagergren, Mr. L.-E. Pettiti and Sir Vincent Evans, substitute judges, replaced respectively Mr. Thór Vilhjálmsson and Mr. Macdonald, who were prevented from taking part in the consideration of the case, and Mr. Liesch, who had died on 4 March 1985 (Rule 22 para. 1 and Rule 24 para. 1).

6. Mr. Wiarda, who had assumed the office of President of the Chamber (Rule 21 para. 5), ascertained, through the Registrar, the views of the Agent of the Italian Government ("the Government"), the Delegate of the Commission and the representative of the applicant regarding the necessity for a written procedure (Rule 37 para. 1). On 24 November 1984, the President directed that the Agent and the representative should each have until 31 January 1985 to file a memorial and that the Delegate should be entitled to reply in writing within two months from the date of the transmission to him by the Registrar of whichever of the aforesaid documents should last be filed.

The memorial of Mr. Vallon - to whose representative the President had granted leave, on 24 November 1984, to use the Italian language (Rule 27 para. 3) - was received at the registry on 24 January 1985, and that of the Government on 1 February.

In a letter of 20 February 1985, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearings.

7. After consulting, through the Registrar, the Agent of the Government, the Commission's Delegate and the applicant's representative, the President directed on 6 March that the oral hearings should open on 27 March 1985 (Rule 38).

On 12 March, the President granted to the Agent of the Government leave to use the Italian language at the hearings (Rule 27 para. 2).

8. The hearings were held in public at the Human Rights Building, Strasbourg, on the appointed day. Immediately before they opened, the Court had held a preparatory meeting.

There appeared before the Court:

- for the Government

Mr. A. Squillante, Section President at the Consiglio
di Stato, Head of the Diplomatic Legal
Service of the Ministry of Foreign Affairs, Agent,

Mr. D. Striani, retired judge, Counsel;

- for the Commission

Mr. S. Trechsel, Delegate;

- for the applicant

Mr. G.B. Gramatica, avvocato, Counsel.

9. The Court heard their addresses. Through their Agent, the Government declared that they no longer contested the opinion of the Commission (see paragraph 20 below). By letter of 25 April 1985, received at the registry the following day, the Government notified the Court that a friendly settlement had been reached with the applicant; they accordingly requested that the case be struck out of the list pursuant to Rule 48 para. 2 of the Rules of Court. Previously, on 17 April, the Registrar had received a letter from

Mr. Gramatica, informing him of the agreement in question; on 11 May, the Registrar was advised by the Commission's Delegate that he would have no objection to the application of Rule 48 para. 2.

AS TO THE FACTS

10. Mr. Daniel Vallon is a French citizen born in 1950. He was wanted in France for murder and attempted murder. On 4 December 1976, he was arrested in Genoa in execution of an international warrant of arrest issued by the investigating judge in Clermont-Ferrand on 21 April 1976. When the French authorities requested the applicant's extradition, he stated that he was opposed to such a course.

11. On 5 January 1977, the public prosecutor brought the case before the investigating chamber of the Genoa Court of Appeal, which had jurisdiction to express an opinion on the extradition request. During the hearings, the applicant alleged that the Royal Decree, no. 5726, of 30 June 1870, relating to the entry into force of the Franco-Italian extradition treaty, was unconstitutional. On 16 January 1978, the investigating chamber referred the question to the Constitutional Court.

12. On 15 June 1979, the Constitutional Court held that the Decree was unconstitutional in so far as it authorised extradition even for crimes punishable by death.

13. On 25 September 1979, the investigating chamber ruled that extradition should not be granted; on 12 October, the public prosecutor ordered the applicant's release.

Nonetheless, the applicant was not set free. This was because the Minister of Justice, on 23 June, had demanded that Mr. Vallon be prosecuted in Italy for the crimes committed in France (Article 10 of the Penal Code); accordingly, the Genoa public prosecutor had issued a new warrant of arrest on 26 June.

14. On 5 July and 1 August 1979, the applicant applied unsuccessfully for release on the ground that he had already been detained on remand for the maximum permissible period; his subsequent appeals were also rejected.

15. Three letters rogatory were sent by the Italian investigating judge to his French counterpart in Clermont-Ferrand.

In the first, dated 22 August 1979, the Italian judge requested the communication of certain documents and the hearing of several witnesses. On 18 October 1979, the French judge informed his Italian colleague that he had dispatched all the papers to Italy on 20 July. These were received by the Genoa investigating judge on 29 October.

The second letter rogatory, dated 15 April 1980, sought the hearing of several persons. As the Italian judge did not receive any reply, he sent requests for one on 27 June and 20 October 1980, and again on 9 January 1981. On 29 January, he was informed through Interpol that his French colleague had sent a reply on 3 July 1980 through the diplomatic channel.

A third letter rogatory was sent by the Italian judge on 28 March 1981.

16. On 2 September 1981, the Italian Ministry of Foreign Affairs notified him of three notes from the French Embassy in Rome. In the first two, dated 11 and 18 September 1980, the French authorities stated that they could not accede to the request in the second letter rogatory, as this might be contrary to French ordre public. The last note, dated 26 May 1981, simply returned the third letter rogatory unexecuted.

17. Meanwhile, on 28 May 1981, the investigating judge, without knowing the answer to the letters rogatory, had committed Mr. Vallon for trial on charges of murder and attempted murder.

On 22 January 1982, the applicant was summoned to appear before the Genoa Assize Court, and on 16 March he was sentenced to fourteen years' imprisonment (reclusione) for murder and acquitted on the other charge.

Both the public prosecutor and Mr. Vallon entered appeals. On 14 January 1983, the Genoa Appeal Court of Assize confirmed the sentence for murder. After changing the second count of the indictment from attempted murder to assault, it held that the prosecution was barred as a result of an amnesty. The judgment became final on 18 January.

18. After the death penalty was abolished in France (Act no. 81-908 of 10 October 1981), the public prosecutor's office in Genoa again referred the matter to the investigating chamber. On 27 January 1983, the investigating chamber once more ruled against the applicant's extradition. He is still serving his sentence in Rome.

PROCEEDINGS BEFORE THE COMMISSION

19. In his application of 23 October 1981 to the Commission (no. 9621/81), Mr. Vallon complained about the proceedings instituted against him in Italy. The complaint concerned the length both of his detention on remand (Article 5 para. 3 of the Convention) (art. 5-3) and of the proceedings (Article 6 para. 1) (art. 6-1).

20. The Commission declared the application admissible on 13 October 1983.

In its report of 8 May 1984 (Article 31 of the Convention) (art. 31), the Commission expressed the unanimous opinion that there had been violations of Article 5 para. 3 and Article 6 para. 1 (art. 5-3, art. 6-1). The full text of its opinion is reproduced as an annex to the present judgment.

AS TO THE LAW

21. The Court has been notified of a friendly settlement reached between the Italian Government and Mr. Vallon (see paragraph 9 above). The Government have acknowledged that there has been violation on their part of the European Convention on Human Rights in the criminal proceedings instituted against the applicant. They have submitted to the applicant a proposal, which has been accepted by his counsel, to pay to the applicant compensation of six million Lire, one million thereof being intended to cover his legal costs.

22. In the light of this agreement, the Government have requested the Court to strike the case out of its list in accordance with Rule 48 para. 2 of the Rules of Court, which is worded as follows:

"When the Chamber is informed of a friendly settlement ... it may, after consulting, if necessary, the Parties, the Delegates of the Commission and the applicant, strike the case out of the list."

23. The Court takes formal note of the friendly settlement reached by the Government and the applicant. As to the existence of a "general interest", the Court finds that there are no reasons of public policy (ordre public) justifying the continuation of the proceedings (Rule 48 para. 4). In particular, the Court recalls that, in several earlier cases, it has already determined, in the context of Article 5 para. 3 and Article 6 para. 1 of the Convention (art. 5-3, art. 6-1), legal issues analogous to those arising in the instant

case, thereby clarifying the scope of the engagements undertaken by the Contracting States in these areas (see the following judgments: Wemhoff, 27 June 1968, Series A no. 7; Neumeister, 27 June 1968, Series A no. 8; Stögmüller, 10 November 1969, Series A no. 9; Matznetter, 10 November 1969, Series A no. 10; Ringeisen, 16 July 1971, Series A no. 13; Eckle, 15 July 1982, Series A no. 51; Foti and Others, 10 December 1982, Series A no. 56; Corigliano, 10 December 1982, Series A no. 57).

Consequently, it is appropriate to strike the case out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 54 para. 2, second sub-paragraph, of the Rules of Court on 3 June 1985.

Signed: Gérard WIARDA
President

Signed: Marc-André EISSEN
Registrar