

In the Brigandi 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 R. Ryssdal, President,
Mr J. Cremona,
Mr Thór Vilhjálmsson,
Mrs D. Bindschedler-Robert,
Mr F. Gölcüklü,
Mr C. Russo,
Mr N. Valticos,
Mr S.K. Martens,
Mr J.M. Morenilla,

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

Having deliberated in private on 4 October 1990 and 24 January 1991,

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

Notes by the Registrar

* The case is numbered 2/1990/193/253. 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.

** As amended by Protocol No. 8, which came into force on 1 January 1990.

*** The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 16 February 1990, 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. 11460/85) against Italy lodged with the Commission under Article 25 (art. 25) by a national of that State, Mr Natale Brigandi, on 22 February 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 its obligations under Article 6 para. 1 (art. 6-1) of the Convention and Article 1 of Protocol No. 1 (P1-1).

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. He was granted leave to present his own case during the written procedure (Rule 30 para. 1,

second sentence). He subsequently informed the Court that he considered it unnecessary to attend the hearing.

3. On 21 February 1990 the President of the Court decided, under Rule 21 para. 6 and in the interests of the proper administration of justice, that a single Chamber should be constituted to consider the instant case and the Zanghi and Santilli cases*.

* Note by the Registrar: 3/1990/194/254 and 5/1990/196/256.

4. 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 26 March 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr J. Cremona, Mr Thór Vilhjálmsson, Mrs D. Bindschedler-Robert, Mr F. Gölcüklü, Mr R. Bernhardt, Mr S.K. Martens and Mr J.M. Morenilla (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr N. Valticos, substitute judge, replaced Mr Bernhardt, who was unable to take part in the consideration of the case (Rules 22 para. 1 and 24 para. 1).

5. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Italian Government ("the Government"), the Delegate of the Commission and the applicant on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the Registrar received the applicant's memorial on 23 May 1990 and the Government's memorial on 31 July. In a letter received on 31 August, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

6. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 29 August 1990 that the oral proceedings should open on 3 October (Rule 38).

7. On 31 August and 3 October the Commission produced the file on the proceedings before it, as the Registrar had requested on the President's instructions.

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

There appeared before the Court:

(a) for the Government

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

Mr G. Manzo, magistrato, on secondment to the
Ministry of Justice, Counsel;

(b) for the Commission

Mr F. Martínez, Delegate.

The Court heard addresses by the above-mentioned representatives.

AS TO THE FACTS

9. Mr Natale Brigandi lives in Florence. In July 1961, in Reggio Calabria, a Mr B. demolished premises belonging to the applicant which were used as a warehouse and put up a new building on the land.

I. The proceedings at first instance

10. On 14 May 1962 Mr Brigandi sued Mr B. in the Reggio Calabria District Court; he sought injunctions requiring the new building to be demolished and the warehouse to be rebuilt, together with compensation.

11. On 23 July 1973 the District Court refused the first injunction. It awarded ownership of the land to Mr B. - as he had requested it to do under Article 938 of the Civil Code - but ordered him to pay the applicant 10,772,000 Italian lire in damages.

II. The appeal proceedings

12. On 24 May 1974 Mr Brigandi appealed against this judgment, disputing that Article 938 was applicable and seeking to have the situation restored to what it had been formerly.

After holding hearings on 14 August 1974 and 27 January 1975, the Reggio Calabria Court of Appeal reserved judgment on 15 May 1975.

13. On 8 July 1975 the Court of Appeal delivered an initial judgment on the merits. It held, among other things, that Article 938 did not apply to the case; that Mr B. had acted unlawfully; and that he should not only compensate Mr Brigandi but also restore the land and building to their former state.

In an order made the same day the court appointed an expert to assess whether the building put up by Mr B. included premises corresponding to the demolished warehouse and, if not, to indicate the work necessary for reinstatement.

14. The expert took the oath on 12 January 1976. He visited the site on 20 September and 14 December 1976 and again on 11 January 1977 and produced his report on 10 February 1977.

15. The parties did not attend a hearing arranged for 14 February. At the next hearing, on 23 May 1977, the applicant challenged the report. The Court of Appeal summoned the expert, but he did not appear until 26 June 1978; in the meantime four hearings (on 28 November 1977 and 23 January, 24 April and 22 May 1978) had been adjourned with the agreement of the parties. The expert was asked to produce fuller information and produced a further report on 12 October 1978.

16. At hearings on 26 February and 28 May 1979 Mr Brigandi challenged the expert's new findings. He urged the court to order the expert to answer properly the questions that had been put to him or, failing that, to replace him.

Further hearings were held on 10 December 1979 and 24 March 1980; at the first of these the applicant submitted the opinion of a privately retained expert. On 14 April 1980 the case was declared to be ready for trial.

17. On 26 May 1980 the parties made their submissions to the judge responsible for preparing the case for trial (consigliere istruttore) and were asked by him to enlarge upon them before the court itself on 28 May 1981. On that date the hearing was

adjourned to 22 October 1981 as the judge in question was absent.

The Court of Appeal reserved judgment on 18 February 1982. In a judgment dated 20 January 1983, which was filed in the registry on 18 February, it confirmed that Mr B. was under a duty to restore the land and building to their former state, and it ordered him to pay the applicant 80,190,000 lire plus interest in respect of pecuniary damage and 30,000,000 lire in respect of non-pecuniary damage.

III. The proceedings in the Court of Cassation

18. On 23 June 1983 Mr B. appealed on points of law. The applicant produced his pleadings on 3 August, and on 20 November he applied for a date to be fixed for the hearing. The hearing was set down for 6 June 1984 but was postponed to 12 December at the request of counsel for Mr B.

19. On that date the division of the Court of Cassation to which the appeal had been allocated relinquished jurisdiction in favour of the full court (sezioni unite), as Mr B. had in effect pleaded that the ordinary courts (giudice ordinario) had no jurisdiction.

20. The Court of Cassation gave judgment on 13 June 1985. In a judgment filed in the registry on 23 November it dismissed the appeal in so far as it related to the reinstatement of the warehouse and to non-pecuniary damage. It nonetheless set aside the Court of Appeal's decision on account of failure to give reasons inasmuch as the court below had determined the question of rebuilding a cellar attached to the warehouse; and it also held that the pecuniary damage had not been assessed correctly. It remitted the case to the Messina Court of Appeal for a fresh determination of these two points.

IV. The rehearing

21. On 10 September 1986 Mr Brigandi issued proceedings against Mr B. in the Messina Court of Appeal. The preparation of the case for hearing began on 20 January 1987. A hearing fixed for 17 March was adjourned at the applicant's request, and the one after that was postponed from 16 June to 7 July. On 3 November 1987 the parties made their submissions to the judge responsible for preparing the case for trial and they appeared before the court on 3 October 1988.

22. On 31 October the Court of Appeal - which had reserved judgment - ordered that the documents relating to the proceedings at first instance (see paragraphs 10-11 above) should be added to the file, and it appointed an expert to assess Mr Brigandi's loss of earnings.

23. On 17 January 1989 the judge responsible for the preparation of the case gave the expert ninety days to complete his task and set the next hearing down for 2 May 1989. That hearing and two others (on 16 May and 4 July) were cancelled, because the expert did not produce his report until 25 September.

On 3 October the parties were requested to make their submissions at a hearing on 7 November 1989.

In a judgment of 23 July 1990, which was filed in the registry on 8 October 1990, the Court of Appeal awarded the applicant 11,355,155 lire - plus interest and a sum to compensate for currency depreciation - in respect of pecuniary damage, but found against him as regards the cellar attached to the warehouse. To the Court's knowledge, neither of the parties has appealed to the

Court of Cassation.

PROCEEDINGS BEFORE THE COMMISSION

24. In his application of 22 February 1985 to the Commission (no. 11460/85) Mr Brigandi complained of the length of the civil proceedings instituted by him and of the failure to respect his entitlement to the peaceful enjoyment of his possessions; he relied on Article 6 (art. 6) of the Convention and Article 1 of Protocol No. 1 (P1-1).

25. The Commission declared the application admissible on 5 December 1988. In its report of 6 December 1989 (made under Article 31) (art. 31) it expressed the opinion that there had been a violation of Article 6 para. 1 (art. 6-1) of the Convention (unanimously) but not of Article 1 of Protocol No. 1 (P1-1) (by twelve votes to seven). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment*.

* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 194-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

26. At the hearing on 3 October 1990 the Government confirmed the final submission in their memorial, in which they requested the Court to hold that there had been no violation of the Convention or of Protocol No. 1 in the instant case.

AS TO THE LAW

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

27. The applicant submitted that his civil action was not tried within a "reasonable time" as required by Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The Government rejected this submission but the Commission accepted it.

28. The period to be considered began only on 1 August 1973, when Italy's declaration recognising the right of individual petition took effect, and not as far back as 14 May 1962, when Mr B. was summoned before the Reggio Calabria District Court (see paragraph 10 above). In order to determine the reasonableness of the length of time which elapsed after the former date, regard must be had, however, to the state of the case at that moment (see, among other authorities, the Baggetta judgment of 25 June 1987, Series A no. 119, p. 32, para. 20).

For the purposes of the present judgment the proceedings ended on 8 October 1990, when the Messina Court of Appeal's judgment was filed (see paragraph 23 above).

29. The participants in the proceedings presented argument as to the way in which the various criteria employed by the Court in this context - such as the degree of complexity of the case, the conduct of the applicant and that of the competent authorities -

should apply in the present case.

30. Under Article 6 para. 1 (art. 6-1) of the Convention everyone has the right to a final decision, within a reasonable time, on disputes (contestations) over his civil rights and obligations. The Contracting States accordingly have the obligation to organise their legal systems so as to allow the courts to comply with this requirement (see, as the most recent authority, the *Unión Alimentaria Sanders SA* judgment of 7 July 1989, Series A no. 157, pp. 14-15, para. 38).

The Court points out that, under its case-law on the subject, the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case. In this instance the circumstances call for an overall assessment (see, *mutatis mutandis*, the *Obermeier* judgment of 28 June 1990, Series A no. 179, p. 23, para. 72).

The case was not complex. Admittedly, it was dealt with at several levels of jurisdiction, but the Court cannot in the instant case regard as "reasonable" a lapse of time of more than seventeen years, especially as a period of over eleven years had earlier elapsed before Italy recognised the right of individual petition.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

31. The applicant claimed that the length of the proceedings in question deprived him of the enjoyment of his property. He relied on Article 1 of Protocol No. 1 (P1-1), which provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Neither the Government nor the Commission shared this view.

32. In view of the circumstances of the case and the conclusion reached in paragraph 30 above, the Court considers it unnecessary to determine also the complaint based on Article 1 of Protocol No. 1 (P1-1).

III. APPLICATION OF ARTICLE 50 (art. 50)

33. Under Article 50 (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."

Mr Brigandi sought compensation for damage in the amount of 10,000,000,000 Italian lire.

34. The Government pointed out that the judicial authorities had awarded the applicant compensation in kind, in the form of the reinstatement of his property, together with 11,355,155 lire - plus interest and a sum to compensate for currency depreciation - in respect of loss of enjoyment and 30,000,000 lire in respect of non-pecuniary damage.

The Commission left the matter to the Court's discretion.

35. The Court considers that the measures already taken by the Italian courts did not make full reparation for the consequences of the breach that has been found. Making an assessment on an equitable basis, it awards Mr Brigandi the sum of 15,000,000 lire.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention;
2. Holds that it is unnecessary to rule on the complaint based on Article 1 of Protocol No. 1 (P1-1);
3. Holds that the respondent State is to pay to Mr Brigandi 15,000,000 (fifteen million) Italian lire;
4. Dismisses 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 19 February 1991.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar