

In the Santilli 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 5/1990/196/256. 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. 11634/85) against Italy lodged with the Commission under Article 25 (art. 25) by a national of that State, Mr Franco Santilli, on 4 March 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 and designated the lawyer

who would represent him (Rule 30). On 19 March 1990 the President of the Court granted him leave to use the Italian language (Rule 27 para. 3).

3. On 21 February 1990 the President 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 Brigandi and Zanghi cases*.

* Note by the Registrar. Cases nos. 2/1990/193/253 and 3/1990/194/254.

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-Röbert, 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 17 July 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. Martinez, Delegate;

(c) for the applicant

Mr F. Albanese, avvocato,

Counsel.

The Court heard addresses by the above-mentioned representatives.

AS TO THE FACTS

9. Mr Franco Santilli lives at Tocco Casauria (Pescara), where in 1976 he set up a food-production business. On 24 July 1979 a credit institution lent him 100,000,000 lire on the condition subsequent that the sum would be used solely for equipping the firm. On 11 September the amount was paid into the applicant's account, but the bank used it to offset the debit balance.

10. On 27 September 1979 Mr Santilli sued his bank in the Pescara District Court and simultaneously applied for an interim order; he sought to be able to invest the amount he had borrowed and claimed compensation for the damage suffered.

I. The proceedings at first instance

11. On 18 October 1979 the presiding judge of the District Court refused the application for an interim order.

Between 12 December 1979 (when the defendant gave notice of its intention to defend) and 20 June 1984 (when the court reserved judgment) the judge responsible for preparing the case for trial held eleven hearings. Five of these (26 March and 20 November 1980 and 18 March, 1 July and 29 October 1981) were taken up with argument or the completion of preparatory formalities (filing of documents, hearing of witnesses and dismissal of an application for an expert opinion) and three others with hearing addresses (on 20 January, 25 March and 23 June 1982). As for the final three (on 9 and 23 March and 21 December 1983), no sooner had they begun than they were adjourned, in particular because the judge responsible for preparing the case was absent or had not been replaced by his successor.

In the main action the District Court found against the applicant in a judgment of 19 July 1984, which was filed in the registry on 20 October.

II. The appeal proceedings

12. The applicant's trustee in bankruptcy (curatore fallimentare - see paragraph 13 below) lodged an appeal on 7 December 1984, and four hearings took place in the Court of Appeal of Aquila (on 5 February, 7 May and 15 October 1985 and 15 April 1986). The first of these was adjourned at the parties' request.

In a judgment dated 6 May 1986 and filed in the registry on 18 June 1986 the Court of Appeal upheld the impugned decision. The trustee in bankruptcy did not appeal on points of law.

III. The applicant's bankruptcy

13. On 29 February 1980 Mr Santilli had applied for court-supervised administration of his affairs (amministrazione controllata) on grounds of the financial difficulties to which the unavailability of the borrowed money had given rise. The Pescara District Court had granted his application on 25 March 1980.

Five days later the credit institution invoked the clause in the contract containing the condition subsequent (see paragraph 9 above) and demanded immediate repayment of the loan.

On 12 June 1982 the District Court granted the applicant a

judicially approved arrangement with his creditors for which he had applied on 22 May. It adjudged him bankrupt in a judgment of 26 June 1984, which was filed in the registry on 16 July. Under Italian legislation Mr Santilli lost, in particular, the right to take legal proceedings in property matters, which right vested in the trustee in bankruptcy appointed by the District Court.

PROCEEDINGS BEFORE THE COMMISSION

14. In his application of 4 March 1985 to the Commission (no. 11634/85) Mr Santilli complained of the length of the civil proceedings instituted by him and of the disregard of his right to respect for his correspondence and of his entitlement to peaceful enjoyment of his possessions; he relied on Articles 6 and 8 (art. 6, art. 8) of the Convention and on Article 1 of Protocol No. 1 (P1-1).

15. On 10 March 1989 the Commission declared the application inadmissible as to the second complaint but admissible as regards the other two. In its report of 6 November 1989 (made under Article 31) (art. 31) it expressed the unanimous opinion that there had been a breach of Article 6 para. 1 (art. 6-1) of the Convention but not of Article 1 of Protocol No. 1 (P1-1). The full text of the Commission's opinion 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-D 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

16. 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)

17. 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.

18. The period to be considered began on 27 September 1979, when the summons was served on the defendant. It ended on 18 June 1986, when the Court of Appeal's judgment was filed.

19. 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.

20. 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 somewhat complex. Furthermore, one of the adjournments was due to the parties. Between the hearings, however, the trial court allowed periods to elapse that were too long and was totally inactive for nearly two years (23 June 1982 - 20 June 1984). The Court accordingly cannot regard a lapse of time of approximately six years and nine months as "reasonable" in the instant case.

That being so, there has been a breach of Article 6 para. 1 (art. 6-1).

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

21. The applicant claimed that the length of the proceedings in question deprived him of the enjoyment of his property (in this case a bank credit). 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.

22. In view of the circumstances of the case and the conclusion reached in paragraph 20 above, the Court considers it unnecessary to determine also the complaint based on Article 1 of Protocol No. 1 (art. (P1-1)).

III. APPLICATION OF ARTICLE 50 (art. 50)

23. 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."

A. Damage

24. Mr Santilli sought compensation of 2,527,000,000 Italian lire in respect of pecuniary damage and 7,500,000,000 lire in respect of non-pecuniary damage. He cited his bankruptcy and his loss of professional reputation.

25. In the Government's submission, there could be no question of pecuniary damage as the applicant had lost his case in the national proceedings. As to non-pecuniary damage, the mere finding of a breach of Article 6 para. 1 (art. 6-1) would in itself provide sufficient just satisfaction.

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

26. As regards pecuniary damage, the Court agrees with the Government. But it considers that the applicant did sustain some non-pecuniary damage and, making an assessment on an equitable basis, it awards him 10,000,000 lire under this head.

B. Costs and expenses

27. The applicant claimed 6,488,625 lire in respect of fees and expenses in the proceedings before the Court.

28. On the basis of the information in its possession, the observations submitted and its own case-law on the subject, the Court, making an assessment on an equitable basis, awards him 4,000,000 lire for the costs and expenses not covered by legal aid.

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 Santilli 10,000,000 (ten million) Italian lire for non-pecuniary damage and 4,000,000 (four million) lire for costs and expenses;
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