

In the Motta 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 F. Matscher,  
Mr L.-E. Pettiti,  
Sir Vincent Evans,  
Mr C. Russo,  
Mr J. De Meyer,  
Mr N. Valticos,  
Mr A.N. Loizou,  
Mr J.M. Morenilla,

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

Having deliberated in private on 2 October 1990 and 24 January 1991,

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

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Notes by the Registrar.

\* The case is numbered 4/1990/195/255. 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.

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## PROCEDURE

1. The case was referred to the Court on 16 February 1990 by the European Commission of Human Rights ("the Commission"), 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. 11557/85) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Luciano Motta, on 22 April 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).

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 given leave to present his own case during the written procedure and obtained approval for the lawyer appointed by him for the hearing (Rule 30). On 30 March 1990 the President of the Court authorised

him to use the Italian language (Rule 27 para. 3) and then, on 24 September 1990, granted him legal aid (Rule 4 of the Addendum to the Rules of Court).

3. On 21 February 1990 the President decided that, pursuant to Rule 21 para. 6 and in the interests of the proper administration of justice, this case and the cases of Manzoni, Pugliese (I), Alimena, Frau, Ficara, Viezzer, Angelucci, Maj, Girolami, Ferraro, Triggiani, Mori, Colacioppo and Adiletta and Others\* should be heard by the same Chamber.

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\* Cases of Manzoni (7/1990/198/258), Pugliese (I) (8/1990/199/259), Alimena (9/1990/200/260), Frau (10/1990/201/261), Ficara (11/1990/202/262), Viezzer (12/1990/203/263), Angelucci (13/1990/204/264), Maj (14/1990/205/265), Girolami (15/1990/206/266), Ferraro (16/1990/207/267), Triggiani (17/1990/208/268), Mori (18/1990/209/269), Colacioppo (19/1990/210/270), Adiletta and Others (20/1990/211/271-273)

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4. The Chamber to be constituted for this purpose 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 F. Matscher, Mr L.-E. Pettiti, Sir Vincent Evans, Mr J. De Meyer, Mr N. Valticos, Mr A.N. Loizou and Mr J.M. Morenilla (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

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's lawyer 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 22 June 1990 and the Government's memorial on 31 July. By 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 1 October 1990 (Rule 38).

7. On 31 August 1990 the Commission produced the file on the proceedings before it, as requested by the Registrar 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, seconded to  
the Diplomatic Legal Service of the  
Ministry of Foreign Affairs, Co-Agent;

(b) for the Commission

Mr S. Trechsel, Delegate;

(c) for the applicant

Mr S. Motta, praticante procuratore legale, Counsel.

The Court heard addresses by the above-mentioned representatives, as well as their answers to its questions.

On 23, 25 and 26 October the registry received from the participants in the proceedings additional information in reply to the Court's questions and observations on the applicant's claims for just satisfaction.

#### AS TO THE FACTS

9. Mr Luciano Motta, who is an Italian national, practises as a doctor at Carlentini (Syracuse). The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 17-25 of its report, see paragraph 12 below):

"17. The applicant complains of proceedings resulting from his dealings with the INAM (the national health insurance institute). Under the Italian health insurance system, the patient receives direct assistance, i.e. he is not required to pay the doctor, pharmacist or other provider of medical services, who is paid by the INAM on submission of a bill.

18. The INAM refused to pay a bill submitted by the applicant on the ground that he had not performed medical services he was claiming for.

On 15 June 1979 he therefore applied to Lentini magistrate's court ('pretore'), sitting as a labour tribunal, for an order that the INAM pay him for the medical services provided between September 1978 and January 1979.

19. On 10 July 1979, the INAM opposed the order to pay on the ground that it had found irregularities concerning the services provided. In view of the seriousness of the INAM's allegations, the Court forwarded the file to the Syracuse public prosecutor's office for a criminal investigation if appropriate. On 11 September 1979, the public prosecutor's office sent the file to the investigating judge.

On 8 October 1979, the magistrate's court decided to suspend the civil proceedings pending the outcome of the criminal proceedings, in accordance with Article 295 of the Code of Civil Procedure.

20. On 20 October 1979, the investigating judge of Syracuse Criminal Court informed the applicant that he was being investigated on charges of forgery and fraud in connection with matters which had occurred on 16 July 1979 (the date of the bill for services from September 1978 to January 1979).

21. On 30 October 1979, the investigating judge questioned the applicant. On 30 November 1979 he questioned the patients said to have received the medical services. On 18 January 1980, the INAM submitted a further report to the public prosecutor.

On 20 March 1980, the INAM entered a claim for damages in the criminal proceedings.

22. On 6 June 1980, the investigating judge decided to commit the applicant for trial before Syracuse Criminal Court.

According to the applicant, the trial should have taken place in the autumn of 1981. In September 1981, he requested in writing that a date be set for the hearing. On 10 November 1981, he was summoned to appear at a hearing scheduled for 26 January 1982, which had to be postponed to 4 June 1982 because he had dismissed his defence counsel and the new defence counsel was not available. As the public prosecutor did not object, the court agreed to the postponement. On 4 June 1982 the accused and 20 witnesses were examined. As the defence had asked for various documents to be produced, it was decided to resume examination of the case on 26 October 1982, on which date the proceedings were adjourned because the composition of the division handling the case had changed. The hearing was set down for 10 December 1982 but postponed at the request of the State Counsel to 18 March 1983, then adjourned sine die: the division which had handled the initial stage of the trial could not be reconvened because one of its members, an honorary deputy 'pretore', had left the division.

23. On 21 March 1983, the applicant applied again for a date to be set for a hearing. On 12 April 1983, he was summoned to appear at a hearing on 13 June 1983. On that date the court delivered a decision, filed with its registry on 20 June 1983, that the proceedings should be discontinued because of an amnesty.

24. The applicant appealed. The file was transferred to Catania Court of Appeal on 8 November 1983.

The applicant twice asked for a date to be set for the hearing. The President of the Court of Appeal directed that the hearing be held on 9 February 1984. On that date, the applicant's lawyer was absent, and as the President of the Court had not authorised the defendant to conduct his own defence, the hearing was postponed to 6 April 1984, the date on which judgment was delivered. The judgment, filed with the court registry on 18 May 1984, upheld the decision at first instance.

25. The applicant appealed to the Court of Cassation, which dismissed the appeal in a judgment of 27 April 1987 filed with the registry on 4 December 1987.

According to an attestation supplied by the applicant, the civil proceedings have not been resumed (Article 297 of the Code of Civil Procedure)."

10. At the hearing on 1 October 1990 (see paragraph 8 above) the applicant confirmed that this was indeed the situation.

#### PROCEEDINGS BEFORE THE COMMISSION

11. In his application of 22 April 1985 to the Commission (no. 11557/85) Mr Motta complained of the length of three sets of proceedings - two civil and one criminal -, of an infringement of the rights of the defence, of the arbitrary nature of the criminal proceedings instituted against him and of a violation of his right to the peaceful enjoyment of his possessions. He relied on Article 6 of the Convention and Article 1 of Protocol No. 1 (art. 6, P1-1).

12. On 14 December 1988 the Commission declared the application admissible solely as regards the length of two sets of proceedings and inadmissible for the rest. In its report of 6 November 1989 (Article 31) (art. 31), it expressed the opinion that there had been a double violation of Article 6 para. 1 (art. 6-1) (unanimously for the criminal proceedings and fourteen votes to three for the civil proceedings). The full text of the

Commission's opinion is reproduced as an annex to this judgment\*.

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\* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 195-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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#### FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

13. At the hearing on 1 October 1990 the Government confirmed the submission put forward in their memorial, in which they requested the Court to hold "that there has been no violation of the Convention in the present case".

#### AS TO THE LAW

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

14. The applicant claimed that the duration of each of the two sets of proceedings in question had exceeded a "reasonable time" within the meaning of Article 6 para. 1 (art. 6-1) of the Convention, according to which:

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

The Government disputed this view, whereas the Commission subscribed thereto.

15. For the impugned criminal proceedings, the period to be taken into consideration began on 20 October 1979, when the investigating judge advised Mr Motta of the opening of an investigation concerning him. It ended on 27 April 1987, when the Court of Cassation dismissed the applicant's appeal (see, *inter alia*, the Baggetta judgment of 25 June 1987, Series A no. 119, p. 32, para. 20).

The civil proceedings instituted by the applicant with a view to obtaining an injunction began on 15 June 1979. They were stayed pending the outcome of the criminal proceedings from 8 October 1979 to 4 December 1987 (the date on which the Court of Cassation's judgment in the criminal proceedings was filed with the registry) and they have not since been resumed, in any event as far as the Court is aware.

16. 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.

17. Article 6 para. 1 (art. 6-1) of the Convention guarantees to everyone the right to a final decision within a reasonable time in the determination of any criminal charge against him or of his civil rights and obligations.

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).

As regards the criminal proceedings, the Court notes that the case was not a complex one. Moreover the applicant caused hardly any delay in its examination and indeed on four occasions applied for dates to be set for the hearings (see paragraph 9 above, under nos. 22, 23 and 24). The proceedings at first instance took three years and eight months from 20 October 1979 to 20 June 1983. Subsequently, three years elapsed from the delivery of the Court of Appeal's judgment on 6 April 1984 to the delivery of that of the Court of Cassation on 27 April 1987 and a further seven months before the latter judgment was filed with the registry, thereby enabling the civil proceedings to be resumed. In these circumstances the Court cannot regard as "reasonable" in the instant case a lapse of time of more than seven and a half years.

The civil proceedings were prevented from pursuing their course by the slowness of the criminal proceedings.

There has therefore been, in both cases, a violation of Article 6 para. 1 (art. 6-1).

## II. APPLICATION OF ARTICLE 50 (art. 50)

18. 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

19. Mr Motta sought 1,464,000,000 Italian lire for pecuniary and non-pecuniary damage. He cited, *inter alia*, his alleged loss of earnings and the protracted uncertainty in which he claimed to have lived until the conclusion of the proceedings in question.

20. The Commission considered that the length of the criminal proceedings had caused the applicant pecuniary damage at least in the amount of the disputed fees, the reimbursement of which he had ultimately forgone; the appropriate costs and interest should in its view be added to this sum. Mr Motta was also entitled to compensation for the non-pecuniary damage arising from the failure to conduct the proceedings within a reasonable time.

As regards the civil proceedings, however, the Commission was of the view that a finding of a violation would constitute sufficient satisfaction.

21. In the Government's opinion no pecuniary damage could be established. At the most there might be slight non-pecuniary damage for which it would be appropriate, if a violation were to be found, to award a modest sum.

22. The evidence does not show that the applicant suffered pecuniary damage deriving from the violation of Article 6 para. 1 (art. 6-1). On the other hand, he must have sustained a degree of non-pecuniary damage for which the Court, making an assessment on an equitable basis, awards him 10,000,000 lire.

### B. Costs and expenses

23. The applicant claimed a total of 239,600,000 lire for costs and expenses incurred in the national courts and subsequently in

Strasbourg. He presented his own case before the Commission, received legal aid for the proceedings before the Court and used a lawyer only at the oral stage of those proceedings.

24. Having regard to the information available to it, the observations submitted and its case-law in this field, the Court, making an assessment on an equitable basis, awards him 2,000,000 lire for such of his costs and expenses as are not covered by legal aid.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 para. 1 (art. 6-1) of the Convention;
2. Holds that the respondent State is to pay to Mr Motta 10,000,000 (ten million) Italian lire for non-pecuniary damage and 2,000,000 (two million) lire for costs and expenses;
3. 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