

In the Manzoni 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:

Notes by the Registrar

- * The case is numbered 7/1990/198/258. 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 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. 11804/85) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Giovanni Manzoni, on 3 June 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 par. 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 and designated the lawyer who would represent him (Rule 30). On 24 September 1990 the President of the Court granted the applicant 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 Motta, Pugliese (I), Alimena, Frau, Ficara, Viezzer, Angelucci, Maj, Girolami, Ferraro, Triggiani, Mori, Colacioppo and Adiletta and Others* should be heard by the same Chamber.

* Cases of Motta (4/1990/195/255), 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)

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 24 July 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 W. Viscardini Donà, avvocato, Counsel.

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

9. On various dates a number of documents were lodged with the registry, including the Government's observations on the applicant's claims for just satisfaction, and their replies, as well as those of Mr Manzoni's lawyer, to the Court's questions.

AS TO THE FACTS

10. Mr Giovanni Manzoni, an Italian national, was born at Zenson di Piave (Treviso). The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 14-25 of its report, see paragraph 13 below):

"14. The applicant was arrested on 9 January 1981 in the Netherlands together with another Italian national following an operation by the Netherlands police which resulted in the seizure of 120 kg of hashish and the arrest of twelve persons. During the investigation carried out by the Netherlands authorities it became clear that the consignment of hashish, which had been brought to the Netherlands from Arzano in the province of Naples, had been received there by the applicant, with accomplices, on 7 January 1981.

15. The Netherlands police notified the Italian police and asked whether the Italian judicial authorities intended to bring prosecutions in Italy against the applicant and another Italian national involved in the same case. The Italian police carried out an investigation. On the basis of the results of that investigation, set out in a report of 21 February 1981 and submitted to it on 29 July 1981, the public prosecutor's office in Naples issued on 19 August 1981 a warrant for the applicant's arrest for drug trafficking, illegal possession of firearms and criminal association. In addition, on 21 August 1981 the public prosecutor's office requested the extradition of the applicant, who was also wanted by the Italian judicial authorities to serve a sentence of 21 years' imprisonment for murder and eight months' imprisonment for escaping. On 25 September 1981 the Italian Ministry of Justice forwarded the extradition request to the Italian Embassy at The Hague. The court in Amsterdam announced its decision with regard to the extradition request on 5 January 1982. It granted the applicant's extradition to stand trial on the charges set out in the extradition request, with the exception of criminal association.

16. The applicant appealed against this decision to the Court of Cassation of the Netherlands. His appeal was dismissed on 8 July 1982.

The applicant was extradited to Italy on 27 July 1982.

17. While in detention on remand in Naples the applicant was questioned for the first time by a judge from the Naples public prosecutor's office on 10 August 1982. The record of the questioning shows that the lawyer whom he had appointed to assist him, although duly advised of the date of the questioning, did not appear on that day. Nevertheless the applicant agreed to be questioned. He was questioned a second time by a judge from the public prosecutor's office on 16 August 1982. An investigating judge was appointed on 30 August 1982 to carry out the investigation. An official communication of the Netherlands decision with regard to the applicant's extradition, together with a copy of the decision of the Netherlands courts on this question, was received by the investigating judge in Naples on 16 October 1982.

18. On 8 March 1983 the investigating judge issued an arrest warrant which was served on the accused in prison.

The applicant's co-accused was questioned by the investigating judge on 7 and 13 September 1983.

On 7 September 1983 the investigating judge asked the Netherlands authorities to send him the documents relating to the prosecutions brought against the other accused in the Netherlands.

The applicant was questioned again on 21 January 1984 by the investigating judge in Spoleto, where the applicant was detained, acting on a request for judicial assistance ...from the Naples investigating judge. The applicant merely referred to the statement which he had sent to the investigating judge dealing with the case in Naples.

19. On an unspecified date the investigating judge passed on the case file to the prosecuting authorities so that they could draw up the prosecution case, which was done on 2 February 1984.

However, on 22 February 1984 counsel for the applicant's co-accused asked the investigating judge to defer the end of the investigation procedure until the documents of the proceedings in the Netherlands had been received.

20. The investigating judge granted this request. He was obliged to repeat his request to the authorities concerned three times, on 21 March, 31 August and 23 October 1984.

The trial documents were received by the investigating judge on 14 November 1984. Their translation - by a translator under oath - was filed on 15 January 1985.

On 21 February 1985 the prosecuting authorities confirmed the pleadings submitted on 2 February 1984.

21. The applicant and his co-accused were committed for trial at the Naples District Court on 7 March 1985.

The first hearing was set for 25 June 1985. Counsel for one of the two accused, who was required to be present at another criminal trial on the same day, requested an adjournment of the hearing and this was granted with the agreement of both accused. The hearing was adjourned until 26 September 1985. On that date it again had to be adjourned because counsel for the defence were unable to be present. This happened again on 2 October 1985.

22. At the hearing on 17 October 1985 the applicant waived his right to appear. The hearing opened at 12.20 pm and closed at 1.40 pm.

On that day the applicant was sentenced to four years' imprisonment, a fine of 10 million lire, a ban on holding public office for five years and a ban on travelling abroad for two years.

23. The applicant and the public prosecutor's office both appealed. The hearings before the Court of Appeal were adjourned several times: on 20 March 1986 because of a strike by all members of the Naples Bar, on 1 July 1986 because counsel for the other person accused was involved in another trial, on 2 October 1986 at the request of counsel for the

accused, who was unable to be present, and on 23 April 1987 because the other accused, who had been arrested in the meantime on another charge, was unable to appear at the hearing.

24. The trial was adjourned until 5 November 1987.

On 5 November 1987 the Court of Appeal in Naples quashed those parts of the judgment at first instance relating to the offences for which extradition had not been granted. It upheld the verdict of guilty on the other charges and increased the penalty imposed on the applicant to six years' imprisonment, a fine of 16 million lire and a life-long ban on holding public office.

The judgment was filed with the registry on 12 November 1987.

25. The applicant appealed to the Court of Cassation on the grounds of lack of reasoning, claiming that the Court of Appeal had acted unlawfully in not giving its reasons for rejecting the request by counsel for the defence for a further hearing in order to be able to include in the case file the judgment given against the accused in the Netherlands and to summon witnesses for the defence. This appeal was rejected by the Court of Cassation on 10 October 1988. By 2 June 1989 the reasoned judgment had still not been filed with the registry of the Court of Cassation."

11. According to information provided to the European Court by the participants in the proceedings, on four occasions (18 July 1983, 17 March, 10 and 14 June 1984) Mr Manzoni asked the judicial authorities to speed up the examination of the case. In addition, it appears that the Court of Cassation's judgment was filed with the registry on 6 October 1989.

PROCEEDINGS BEFORE THE COMMISSION

12. In his application of 3 June 1985 to the Commission (no. 11804/85) Mr Manzoni relied on Article 5 para. 3 and Article 6 paras. 1 and 3 (art. 5-3, art. 6-1, art. 6-3) of the Convention. He complained of the length of his detention on remand, of the refusal to grant him legal aid, of a violation of his right to a fair trial, of an infringement of the rights of the defence and, finally, of the length of the proceedings.

13. On 5 September 1989 the Commission declared the application admissible as regards the last complaint. On 3 May 1988 it had declared it inadmissible for the rest. In its report of 5 December 1989 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art. 6-1). 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 195-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

14. 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)

15. The applicant claimed that his case had not been examined within a "reasonable time" as required under Article 6 para. 1 (art. 6-1) of the Convention, according to which:

"In the determination ... 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.

16. The period to be taken into consideration began on 19 August 1981, the date on which the Italian judicial authorities issued a warrant for the applicant's arrest. It ended on 10 October 1988 with the dismissal of the applicant's appeal to the Court of Cassation (see, *inter alia*, the Baggetta judgment of 25 June 1987, Series A no. 119, p. 32, para. 20).

17. 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.

18. Article 6 para. 1 (art. 6-1) of the Convention guarantees to everyone who is the object of criminal proceedings the right to a final decision within a reasonable time on the charge against him.

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 proceedings were of some complexity, in particular at the investigation stage on account of the need to obtain the file of the trial conducted in the Netherlands. On the other hand, the applicant's conduct gave rise to hardly any delay and in any event the Court cannot regard as "reasonable" in the instant case a lapse of time of more than seven years and one month.

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

II. APPLICATION OF ARTICLE 50 (art. 50)

19. 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

20. Mr Manzoni claimed, without citing any figures, compensation in respect of non-pecuniary damage. He referred to the protracted

uncertainty and anxiety which he had experienced pending the outcome of the criminal proceedings brought against him.

21. According to the Commission, a finding of a violation would not constitute sufficient just satisfaction. The Government expressed the opposite view; they added that at the most it would be appropriate, if a violation were to be found, to award the applicant a modest sum for non-pecuniary damage, having regard to his record.

22. The Court accepts that Mr Manzoni suffered a degree of non-pecuniary damage and, making an assessment on an equitable basis, it awards him 1,000,000 Italian lire under this head.

B. Costs and expenses

23. The applicant claimed 4,250,000 lire, less the sum paid as legal aid, in respect of his lawyer's fees before the Court and a total of 2,375,000 lire for the expenses incurred in the proceedings before the Convention organs.

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 Manzoni 1,000,000 (one 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