

In the Pugliese (I) 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 8/1990/199/259. 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. 11840/85) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Vincenzo Pugliese, on 14 October 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 did not wish to take part in the proceedings before the Court.

3. On 21 February 1990 the President of the Court 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, Manzoni, 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), Manzoni (7/1990/198/258), 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") and the Delegate of the Commission on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the Registrar received the Government's memorial on 31 July 1990. By a letter received on 31 August, the Secretary to the Commission informed the Registrar that the Delegate did not consider it necessary to submit observations in writing.

6. In the meantime, on 20 June, the applicant had communicated to the Registrar his claims for just satisfaction under Article 50 (art. 50) of the Convention (Rules 50 and 1 (k) taken in conjunction).

7. On 29 August 1990 the Chamber decided to dispense with a hearing, having found that the conditions for such derogation from the usual procedure were satisfied (Rules 26 and 38).

8. On 31 August the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

9. On 3 and 25 October, respectively, the registry received the observations of the Commission and the Government on the applicant's claims for just satisfaction.

AS TO THE FACTS

10. Mr Vincenzo Pugliese, an Italian national, resides in Rome. He is a journalist. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 14-24 of its report, see paragraph 12 below):

"14. As part of the creation of a tourist complex, the S. company had contracted with the municipal authority of Cittàreale to construct a ski-lift in the locality. For the purposes of the building work the municipal authority had granted the company a right of way across municipal land. The company, for its part, had purchased those plots of land which belonged to individuals. Then it had fixed and marked out the boundaries of the land and placed building materials on it.

15. However, on an unspecified date, the municipal council terminated its contracts with the S. Company, by decision no. 81 of 1980, and entrusted the SOGELAI company, of which the applicant was the sole director, with the task of constructing the ski-lift. SOGELAI then fixed and marked out the boundaries of the land and, after unsuccessfully summoning the S. company to remove from the land the materials it had placed there, removed them itself at the beginning of September 1981.

16. On 17 September 1981 the S. company lodged a complaint for trespass on its land against those who had marked out the boundaries and removed the materials (Article 633 of the Criminal Code).

On 27 April 1982 the magistrate's court ('pretore') at Borbona sent the applicant a judicial notification informing him that criminal proceedings had been opened against him for the above-mentioned offences.

It was not possible to serve this notification on the applicant at the address he had given.

17. The Government submit in this connection that throughout the preliminary investigation of the case it was impossible to contact the applicant at the address he had given. A report of 9 November 1982, addressed to the magistrate's court at Borbona by the police of the area in which the applicant had claimed to be domiciled, stated that 'although the above-mentioned person is deemed to be resident at no. 13 Via di Porta Cavalleggeri, Rome, he is in fact untraceable. It appears from on-the-spot checks that he keeps this address for the purpose of receiving correspondence, but it has not been possible to ascertain his present abode'.

18. After verifying that the applicant was not imprisoned on other grounds, the Borbona magistrate declared him 'untraceable'. He himself therefore appointed a lawyer to assist the applicant.

The documents in the proceedings, in particular the summons to appear of 4 December 1982, were served on the applicant by deposit at the registry.

The applicant claims, for his part, that he has always had his abode at the address indicated and that, after seeing the police report of 9 November 1982, he lodged a complaint against its signatory for falsely claiming to have carried out on-the-spot checks. In their observations of 24 November 1989 the Government stated that no further action had been taken on this complaint after the public prosecutor's office had verified that, contrary to his claims, the applicant did not have his actual abode at the address indicated, which he used only to receive correspondence, and that the bailiff had therefore been right in not effecting the service at that address.

19. On 19 February 1983 the applicant was summoned to appear at the hearing of 16 April 1983.

At the hearing the applicant, assisted by two lawyers, was questioned together with the other accused persons and the complainant. The hearing was then adjourned, and a further one set for 2 July 1983.

20. At the hearing of 2 July 1983, at which the applicant was present, one of the lawyers for the accused pleaded the

nullity of the earlier hearing on the ground that Mr X, who had represented the public prosecutor's office, had not been qualified to perform that function.

The hearing was therefore cancelled and the case put back on the list. The next hearing took place on 3 March 1984.

21. The applicant was then sent a summons to appear at a hearing on 12 April 1984. At that hearing the magistrate heard the accused persons and various witnesses, then set 2 June 1984 as the date for continuation of the proceedings. At the close of the hearing the magistrate ordered further investigations to be carried out, since it was deemed necessary to establish who was the owner of the plots of land on which the trespass had occurred. An expert was appointed on 7 June 1984, but since he was unable to perform his task within the short time allotted, he had to be replaced. A second expert was appointed; he submitted his report on 30 January 1985.

Other hearings subsequently took place on unspecified dates.

22. On 5 October 1985 the magistrate's court sentenced the applicant to a fine of 800,000 lire and ordered him to pay such damages as would be assessed separately.

The judgment was deposited at the court registry on 19 October 1985.

23. The applicant appealed the same day. He submitted his statement of appeal on 14 February 1986.

On 10 July 1987 the Rieti District Court pronounced an amnesty in application of the President of the Republic's decree no. 865 of 16 December 1986.

24. The applicant claims that on two occasions, on 29 June 1985 and 20 September 1985, he asked the magistrate for permission to conduct his own defence, relying on Article 6 para. 3 (c) (art. 6-3-c) of the Convention. The magistrate allegedly failed to rule on these requests.

On 21 September 1985 the applicant also requested the hearing of three witnesses, and on this request the magistrate is again alleged to have failed to give a ruling."

PROCEEDINGS BEFORE THE COMMISSION

11. In his application of 14 October 1985 to the Commission (no. 11840/85) Mr Pugliese relied on Article 6 paras. 1 and 3 (c) and (d) (art. 6-1, art. 6-3-c, art. 6-3-d) of the Convention. He alleged that he had not been able to present his case in person. He also complained of the failure to hear three defence witnesses and, finally, of the length of the proceedings.

12. 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-C of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

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

13. 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.

14. The period to be taken into consideration began on 27 April 1982, the date on which the judicial notification was sent to the applicant. It ended on 10 July 1987 when the Rieti Court pronounced the amnesty.

15. The Government and the Commission 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.

16. 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).

In fact the case in question was very simple. Moreover, the applicant's conduct gave rise to hardly any delay and there were long periods of stagnation in the proceedings both at first instance and on appeal. It follows that the Court cannot regard as "reasonable" in the instant case a lapse of time of more than five years and two months.

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

II. APPLICATION OF ARTICLE 50 (art. 50)

17. 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 Pugliese sought, without citing any figures, compensation for the damage sustained.

18. According to the Commission, his claims did not relate to the length of the proceedings. The Government took the view that at the most it would be appropriate, if a violation were to be found, to award a modest sum for non-pecuniary damage.

19. The Court accepts that the applicant may have sustained non-pecuniary damage, but, in the circumstances of the case, considers that the finding of a violation of Article 6 (art. 6) constitutes in itself sufficient just satisfaction for the purposes of Article 50 (art. 50).

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 present judgment constitutes in itself sufficient just satisfaction for the purposes of Article 50 (art. 50).

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