

In the Alimena 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 9/1990/200/260. 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. 11910/85) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Bernardino Alimena, on 8 November 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 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c).

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 30 March 1990 the President of the Court granted him leave to use the Italian language (Rule 27 para. 3) and subsequently, on 24 September 1990, accorded 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 Motta, Manzoni, Pugliese (I), 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), Pugliese (I) (8/1990/199/259), 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 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 would submit his observations at the hearing.

6. In the meantime, on 25 June, the applicant had communicated to the Registrar his claims for just satisfaction under Article 50 (art. 50) of the Convention (Rule 50).

7. 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).

8. On 31 August 1990 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

9. 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 A. Sinagra, avvocato,

Counsel.

The Court heard addresses by the above-mentioned representatives.

On 25 October and 16 November 1990, respectively, the registry received the observations of the Government and the Commission on the applicant's claims for just satisfaction.

AS TO THE FACTS

10. Mr Bernardino Alimena, an Italian national, resides at Belvedere Marittimo (Cosenza) where he practises as a lawyer. 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 12 below):

"14. On 8 February 1978, the applicant was charged with contempt of court during a hearing (Article 343 of the Code of Criminal Procedure, CCP). He was alleged to have said to the judge, who had decided in his absence on a case in which he was involved as counsel, even though he had duly advised the court that he would be late: 'Such conduct is arbitrary and improper' and, at the same time, to have thrown the file onto the judge's desk.

15. The judge concerned immediately ordered the arrest of the applicant and started summary proceedings for contempt. The prosecuting authorities requested that the custodial order be discharged and that the applicant be acquitted on the ground that his behaviour did not constitute an offence. The applicant's lawyer pleaded that the court had no jurisdiction within the meaning of Article 60 of the CCP (which was subsequently amended by Law no. 879 of 22 December 1980), the first paragraph of which stipulated:

'If criminal proceedings are opened against a judge or an officer of the public prosecutor's office or if a judge or such an officer has been the victim of an offence and if the proceedings are within the jurisdiction of the judicial organ at which the judge or officer serves, the Court of Cassation shall transfer the case to another judicial organ with comparable jurisdiction.'

16. On 20 March 1978, the public prosecutor at Cosenza transmitted the file to the Attorney General at the Catanzaro Court of Appeal; on 25 March 1978, the Attorney General at the Catanzaro Court of Appeal referred the case to the Court of Cassation.

17. By decision of 2 June 1978, the Court of Cassation referred the case to the Potenza District Court. The file was transmitted to it on 14 July 1978.

18. The investigation - carried out in accordance with the summary procedure - was confined to the questioning of the applicant on 19 October 1978 and of the judge concerned on 24 April 1979. A request by the applicant's counsel of 29 October 1978 that witnesses be heard was not granted.

On 7 May 1979, the public prosecutor's office requested that the applicant be summoned to appear in court.

19. On 18 November 1981, the applicant was summoned to appear at a hearing to be held on 1 February 1982. The defendant failed to appear and the proceedings went ahead in absentia, but the court had to adjourn its examination of the case to 22 February 1982 in order to hear a witness and again to 22 March 1982 for the same reason. On this last date, at the close of the hearing at which the applicant was present, the Potenza District Court, after allowing mitigating circumstances, gave the applicant a suspended sentence of eight months'

imprisonment. It decided that the conviction would not appear in the applicant's criminal record. The judgment was filed with the court registry on 29 March 1982.

20. The applicant appealed against the judgment to the Potenza Court of Appeal. He filed his pleadings on 5 May 1982. The file was transmitted to the Potenza Court of Appeal on 29 September 1982.

On 1 December 1982, the applicant was summoned to appear before the Potenza Court of Appeal.

21. A hearing fixed for 3 February 1983 was adjourned as the applicant had applied for the proceedings at first instance to be set aside on grounds of nullity.

The case was listed for hearing on 24 March 1983. On this date the Court of Appeal upheld the judgment. Its decision was filed with the registry on 11 April 1983.

22. The applicant appealed to the Court of Cassation on 24 March 1983. He filed his pleadings on 11 May 1983. The file was sent to the Court of Cassation on 4 June 1983.

On 14 December 1983, the Court of Cassation set aside the judgment complained of for lack of reasons and referred the case to the Salerno Court of Appeal. The file reached the Salerno Court of Appeal on 21 April 1984 and on 25 September 1984 the applicant was summoned to appear.

23. The Salerno Court of Appeal fixed a hearing for 13 November 1984. At the hearing it ordered a further hearing and adjourned the proceedings to 17 January 1985. At this hearing, the Court heard the parties and the witnesses and then adjourned the hearing to 21 February 1985. On this date, the Court of Appeal acquitted the applicant on the ground of insufficient evidence. Its decision was filed with the registry on 5 March 1985. Since he considered that his acquittal should have been unqualified, the applicant appealed to the Court of Cassation and filed his pleadings on 17 April 1985.

24. The Court of Cassation fixed the hearing of the appeal for 27 June 1985 and notified the applicant's lawyer of the date thereof by letter of 15 May 1985.

25. When he went to the Court of Cassation on 27 June 1985, the applicant's lawyer learned that the Court had examined the appeal the previous day, without having notified him of the change of date, and had dismissed it. The decision of 26 June 1985 was filed with the Court registry on 22 November 1985."

PROCEEDINGS BEFORE THE COMMISSION

11. In his application of 8 November 1985 to the Commission (no. 11910/85) Mr Alimena complained of the length of the proceedings and of a violation of the rights of defence. He relied on Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c) of the Convention.

12. On 5 September 1989 the Commission declared the application admissible. 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 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c). 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-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

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 PARAS. 1 and 3 (c) (art. 6-1, art. 6-3-c)

14. The applicant claimed that his case had not been examined within a "reasonable time"; in addition he complained that the Court of Cassation had ruled on his appeal in the absence of his lawyer. He relied on Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c) of the Convention, according to which:

"1. In the determination ... of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

..."

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

A. Article 6 para. 1 (art. 6-1)

15. As regards the contested criminal proceedings, the period to be taken into consideration began on 8 February 1978 when Mr Alimena was charged and arrested during a hearing. It ended on 27 June 1985 when he learnt that the Court of Cassation had, on the previous day and in his absence, dismissed his appeal (see, amongst various authorities and *mutatis mutandis*, the Baggetta judgment of 25 June 1987, Series A no. 119, p. 32, para. 20).

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 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 was a very simple one. Moreover the applicant's conduct gave rise to hardly any delay. There were, however, long periods of inactivity in the proceedings which the applicant alleged were due to faults inherent in the legal and court system in Italy and for which no satisfactory explanation was given by the Government. It follows that the Court cannot regard as "reasonable" in the instant case a lapse of time of more than seven years and four months.

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

B. Article 6 para. 3 (c) (art. 6-3-c)

18. Mr Alimena complained that the Court of Cassation dismissed his appeal after having held a hearing in the absence of his lawyer; the oral proceedings which had been set down for 27 June 1985 took place a day earlier without the lawyer concerned receiving any prior notification.

19. The Government considered that the applicant did not suffer any damage as a result since his second appeal, which was identical to the first - lodged on 24 March 1983 -, had no prospects of success.

20. The Court notes in the first place that a violation of the Convention is conceivable even where no damage arises (see, *inter alia*, the Artico judgment of 13 May 1980, Series A no. 37, p. 18, para. 35). It observes further that the competent Italian authorities were under a duty to take steps to ensure that the applicant enjoyed effectively the right to which they had recognised he was entitled, namely the possibility of being represented by a lawyer at the examination of his appeal (*ibid.*, p. 18, para. 36). They in fact deprived him of legal assistance which could have helped him in his attempt to secure an unqualified acquittal.

Accordingly, there has been a violation of Article 6 para. 3 (c) (art. 6-3-c).

II. APPLICATION OF ARTICLE 50 (art. 50)

21. 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

22. Mr Alimena claimed compensation of 70,000,000 Italian lire for pecuniary damage and at least 100,000,000 lire for non-pecuniary damage. He cited the harmful consequences of the length of the proceedings on his life and on his career as a lawyer.

23. There is no evidence - as the Commission and Government correctly pointed out - that he suffered pecuniary damage as a result of the failure to conduct the proceedings within a reasonable time. He must nevertheless have suffered a degree of stress which calls for financial reparation despite the fact that the proceedings resulted in an acquittal - which was in any case pronounced only on the grounds of insufficient evidence. The Court considers it equitable to award him 10,000,000 lire under this head. As to the impugned infringement of the rights of the defence, on the other hand, the finding of a violation of Article 6 para. 3 (c) (art. 6-3-c) constitutes just satisfaction in this instance.

B. Costs and expenses

24. The applicant claimed a total of 29,000,000 lire for lawyers' fees and expenses incurred in the national courts and then before the Convention organs.

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 3,000,000 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 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c) of the Convention;

2. Holds that the respondent State is to pay to Mr Alimena 10,000,000 (ten million) Italian lire for non-pecuniary damage and 3,000,000 (three 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