

In the Frau 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 10/1990/201/261. 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 par. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12147/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Aventino Frau, on 22 December 1982.

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 and designated the lawyer who would represent him (Rule 30). On 29 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 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, Pugliese (I), Alimena, 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), Alimena (9/1990/200/260), 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 par. 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 18 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 did not consider it necessary to submit observations in writing.

6. 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).

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. 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

9. Mr Aventino Frau, an Italian national, resides in Salò 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 14-31 of its report, see paragraph 12 below):

"14. The facts which gave rise to the application are the same as those underlying application no. 10253/83, Savoldi v. Italy, in which the applicant is mentioned as 'Member of Parliament F.'; the application in question was declared admissible by the Commission on 5 July 1985*.

* Note by the Registrar: The text of this decision can be obtained from the Directorate of Human Rights of the Council of Europe.

15. On 16 November 1973 the applicant, who was a Member of Parliament, had put a parliamentary question to the Minister of the Treasury concerning irregularities in the management of the 'Banco di Milano'. In his reply, dated 9 August 1974, the Minister of the Treasury stated that application had been made to the judicial authorities on 5 December 1973 for an inquiry.

16. The 'Banco di Milano' was put into compulsory liquidation on 16 January 1975. On 18 January 1975 D. L., its Director-General, was arrested for misappropriation of funds and fraudulent bankruptcy. D. L. fled to Switzerland where on 14 July 1975 he brought proceedings before both the Swiss and Italian authorities against the applicant and Savoldi (the applicant's lawyer and adviser) for obtaining money from him with menaces.

An inquiry was opened by the judicial authorities in both countries.

a) Judicial investigations in Switzerland

17. On 6 October 1975 the Swiss authorities, acting on a request for judicial assistance (commission rogatoire) from the Italian judicial authorities, handed over to the Milan public prosecutor, who was handling the case, the documents relating to the judicial investigation in Lugano. This emerges from a letter sent by the investigating judge at Lugano to the Milan public prosecutor, worded as follows: 'I return to you herewith the commission rogatoire of 6 October 1975, which I have put into effect this day by sending to you the documents contained in the file of the investigative proceedings opened by me against the accused referred to above'. Following contacts and agreements with the Italian judicial authorities, on 2 September 1977 the Swiss authorities finally relinquished jurisdiction in this case to the Italian authorities.

b) Judicial investigations in Italy

18. The Italian authorities had also opened investigations in this case. The Milan public prosecutor, noting that D. L., in a press interview which he had sent to him, had expressly accused the three above-mentioned persons of the offence of obtaining money with menaces, decided on 22 September 1975 to open a preliminary investigation.

19. On 21 October 1975 the public prosecutor transmitted the file to the investigating judge requesting him to conduct the investigation in this case.

20. Practically all the investigative measures in the case were completed before 8 February 1976, since it was on that date that the investigating judge invited the public prosecutor's office to draw up the prosecution case (Article 369 of the Code of Criminal Procedure).

21. In the applicant's case, it was necessary to request the lifting of parliamentary immunity. This request was made by the public prosecutor's office on 20 October 1975. The applicant waived his right to avail himself of his immunity, and the decision was taken on 13 April 1976. It was communicated to the Ministry of Justice by letter of 21 April 1976 from the President of the Chamber of Deputies.

22. The investigating judge also sent two commissions

rogatoires to the Swiss judicial authorities on 16 November 1975 and 7 January 1976, before the Swiss authorities finally relinquished jurisdiction in the case on 2 September 1977. The Government have, however, pointed out that the documents which had been kept on Swiss territory reached the Italian authorities only on 5 April 1978. After these documents had been received, the accused were once again questioned by the investigating judge.

23. On 18 December 1978 the investigating judge in Milan District committed the applicant and the other accused for trial and submitted a file of about 1,000 pages.

c) Trial

24. A date was set for the case to be heard before the Milan District Court in 1979. The first hearing, which was to have taken place on 28 May 1979, had to be postponed first of all until 24 September 1979 because the complainant had not been ordered to appear. This second hearing also had to be adjourned because the members of the court were not the same as at the first hearing; it was postponed until 19 November 1979.

25. At the close of the hearing on that date the applicant was acquitted on the grounds of insufficient evidence. The judgment was filed with the court registry on 23 November 1979. The applicant appealed against this judgment.

26. ...

d) Interlocutory proceedings

27. On 17 May 1979 the applicant's co-accused had challenged the court's territorial jurisdiction. The Milan court dismissed this objection by decision of 19 November 1979. On 22 November 1979, the applicant's co-accused appealed against this decision.

28. By judgment of 17 June 1980, filed with the court registry on 8 July 1980, the Court of Cassation overturned the Milan court's decision and resolved the dispute by ordering that the documents relating to the investigative proceedings opened by the Rome Public Prosecutor's Office be transmitted to the Milan court.

29. The file, which had been transmitted to the Court of Cassation for the purposes of the case, was dispatched on 17 February 1981 to the Milan Court of Appeal before which the case was pending.

e) Appeal proceedings

30. No new investigative measures were ordered on appeal. An initial hearing was set by the Court of Appeal for 15 January 1982, but this had to be adjourned until 10 May 1982 because the judges had not received the file of the proceedings opened in Rome which, following the Court of Cassation's judgment, should have been sent to them (see interlocutory proceedings). The file was sent on 19 February 1982.

31. At the hearing on 10 May 1982 the Chief Public Prosecutor requested the adjournment of the trial to a later date. The case was finally heard on 30 June 1982. The judgment given by the Court of Appeal that day was filed with

the court registry on 15 July 1982. It confirmed the applicant's acquittal."

The judgment was based this time on the finding that no offence had been committed ("perché il fatto non sussiste").

10. The time-limit for an appeal on a point of law by the prosecuting authorities expired on 3 July 1982 (Article 199 of the Code of Criminal Procedure).

PROCEEDINGS BEFORE THE COMMISSION

11. In his application of 22 December 1982 to the Commission (no. 12147/86) Mr Frau complained of the length of the proceedings. He relied on Article 6 para. 1 (art. 6-1) of the Convention. He subsequently alleged other breaches of the same provision.

12. On 5 September 1989 the Commission declared the application admissible as regards the first complaint and 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-E 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 20 October 1975, the date on which the prosecuting authorities asked the Chamber of Deputies to lift the applicant's parliamentary immunity. It ended on 3 July 1982 (see paragraph 10 above).

15. 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.

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).

The proceedings were of some complexity, but there were several periods when they were not carried forward with reasonable expedition, in particular from 8 February 1976, by which time it appears that the investigation had virtually been completed, to 18 December 1978, when the applicant was eventually committed for trial; from the latter date to the applicant's acquittal on 23 November 1979, during which time there were procedural and organisational difficulties for which he was not responsible; and the period of almost two years from 8 July 1980, when the interlocutory proceedings instituted by the applicant's co-defendant were concluded, to 30 June 1982, when the Court of Appeal finally decided the case in Mr Frau's favour, a period in which again there were organisational difficulties. The applicant's conduct, moreover, did not give rise to any delay. It follows that the Court cannot regard as "reasonable" in the instant case a lapse of time of more than six years and eight 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 Frau claimed compensation of nearly 7,000,000,000 Italian lire for damage and costs referable to the domestic proceedings. He cited, among other things, the effects of the prosecution on his health and on his career.

He did not seek the reimbursement of costs and expenses incurred before the Convention organs and this is not a matter which the Court has to examine of its own motion (see, *inter alia*, the Huvig judgment of 24 April 1990, Series A no. 176-B, p. 57, para. 38).

18. The Commission considered that only the damage linked to the unjustified delay should be taken into consideration, but that the applicant had sustained substantial non-pecuniary damage.

In the Government's view, 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 evidence does not show that Mr Frau suffered pecuniary damage deriving from the violation of Article 6 para. 1 (art. 6-1). On the other hand, he suffered a degree of non-pecuniary damage, for which the Court, making an assessment on an equitable basis, awards him 20,000,000 lire.

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 Frau 20,000,000 (twenty million) Italian lire for non-pecuniary

damage;

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