

In the Ficara 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 11/1990/202/262. 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 Article 11 of Protocol No. 8 (P8-11), 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. 12176/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Antonino Ficara, on 17 May 1986.

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 13 March 1990 the President of the Court granted him leave to use the Italian language (Rule 27 para. 3) and, 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), Alimena, Frau, 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), Frau (10/1990/201/261), 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 2 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 M. Miccoli, avvocato, Counsel.

The Court heard addresses by the above-mentioned representatives.

On 25 October 1990 the registry received the Government's observations on the applicant's claims for just satisfaction.

AS TO THE FACTS

9. Mr Antonino Ficara, an Italian national, resides at Archi di Reggio di Calabria. 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. Having lodged a complaint with the public prosecutor's office on 28 December 1978, the applicant was prosecuted for maliciously accusing (Article 368 of the Criminal Code) the following persons, knowing them to be innocent: B. C. of attempted aggravated fraud, the Reggio Calabria labour inspector of forging an official document, and the legal representative of the Reggio Calabria office of the INPS (National Pensions Institute) of defamation.

15. On 27 June 1979 the Reggio Calabria public prosecutor notified the applicant that a preliminary investigation had been opened against him and invited him to appoint a defence counsel.

A summons was issued on 8 April 1980.

The applicant was examined on 30 April 1980 by the Reggio Calabria investigating judge who also examined three witnesses on that day.

16. The investigation stage was concluded on 18 November 1980, when the applicant was committed for trial.

17. The summons to appear, dated 5 December 1981, stated that the case would be tried on 3 February 1982. This hearing was postponed, with the parties' consent.

18. On 26 April 1982, the applicant's defence counsel requested a further postponement of the hearing, having first asked the court to obtain a number of documents - held by the INPS - which it had not yet been possible to have produced.

19. On 11 October 1982, no hearing could take place because it had emerged that one of the judges had signed the order committing the applicant for trial and there was, consequently, incompatibility within the meaning of Article 61 of the Code of Criminal Procedure.

20. On 26 January 1983, there was again no hearing. In the first place, the defendant's counsel had sent word that he could not attend since he was involved in proceedings in the Criminal Court on the same day. Secondly, all hearings were suspended on that day as a mark of respect following the murder of a judge.

21. On 20 April 1983, counsel for the applicant requested an adjournment so that he could study the documents received by the court in the meantime. A hearing was then arranged for 27 May 1983.

22. In a judgment given on 27 May 1983 and filed in the registry on 10 June 1983, the Reggio Calabria District Court sentenced the applicant to sixteen months' imprisonment

(sentence amnestied) and ordered him to pay the complainant's damages.

23. The applicant appealed against this judgment. The Court of Appeal received the file on 31 October 1983.

By summons dated 14 October 1988, the applicant was required to appear at a hearing arranged for 13 December 1988.

24. The hearing of 13 December was postponed, with the parties' consent, until 25 January 1989. On that date, the Reggio Calabria Court of Appeal acquitted the applicant. This judgment was filed in the court registry on 15 February 1989."

10. The time-limit for an appeal on a point of law by the prosecuting authorities expired on 28 January 1989 (Article 199 of the Code of Criminal Procedure).

PROCEEDINGS BEFORE THE COMMISSION

11. In his application of 17 May 1986 to the Commission (no. 12176/86) Mr Ficara complained of the length of the proceedings; he relied on Article 6 para. 1 (art. 6-1) 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 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 196-A 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 para. 1 (art. 6-1)

14. 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.

15. The period to be taken into consideration began on 27 June 1979, the date of the judicial notification to the applicant. It ended on 28 January 1989 (see paragraph 10 above).

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).

The applicant undoubtedly contributed to the delays of which he complained by making three requests for the hearing in the Reggio Calabria District Court to be adjourned. On the other hand, the case was not a complex one and there were long periods of stagnation in the proceedings, in particular the period of almost five years between October 1983 and October 1988 when the case was before the Reggio Calabria Court of Appeal. The Government accepted that the Court of Appeal was unable to deal with its heavy caseload. It follows that the Court cannot regard as "reasonable" in the instant case a lapse of time of nine years and seven months.

There has therefore been 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 Ficara claimed compensation in a total amount of 300,000,000 Italian lire in respect of pecuniary and non-pecuniary damage. He cited loss of earnings and the damage to his reputation resulting from the length of the proceedings instituted against him.

20. The Court notes, in agreement with the Commission and the Government, that the evidence does not show the existence of a causal connection between the violation of Article 6 para. 1 (art. 6-1) and the alleged pecuniary damage. However, the applicant must have suffered 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

21. The applicant claimed a total of 5,700,000 lire, less the amount paid as legal aid, for his lawyer's fees and the expenses incurred by him in the proceedings before the Convention organs.

22. 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 Ficara 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