

In the Viezzer 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:

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#### Notes by the Registrar

\* The case is numbered 12/1990/203/263. 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.

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#### 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. 31-1, art. 47) of the Convention. It originated in an application (no. 12598/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Antonio Viezzer, on 6 November 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).

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, Frau, Ficara, Angelucci, Maj, Girolami, Ferraro, Triggiani, Mori, Colacioppo and Adiletta and Others\* should be heard by the same Chamber.

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\* 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), Ficara (11/1990/202/262), 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)

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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 and his claims for just satisfaction on 6 and 11 July 1990 respectively 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. Gentiloni Silverj, avvocato, Counsel.

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

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 Antonio Viezzer, an Italian national, lives in Rome. When the application was lodged he was a colonel in the Carabinieri (auxiliary service). The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 13-21 of its report, see paragraph 12 below):

"13. After an investigation into the murder of the journalist C. P., who had published articles implicating a number of Italian political figures, it became clear that the information he had obtained came from the archives of the State Security Services.

14. Suspicions concerning the disclosure of this information centred in particular on the applicant, who had served for more than 25 years in the Italian Security Services and had most recently been Head of the Secretariat of 'D' office of the 'SID' (Defence Information Department) which had been disbanded at the time when the application was submitted.

15. On 21 May 1981 the applicant was arrested by order of the Deputy Public Prosecutor of Rome (under an arrest warrant which also concerned a second person), on the grounds that, while serving in the State Security Services, he had obtained documents classified as secret with a view to political espionage, and had also divulged information which should have remained confidential in the domestic and international political interests of the State (Article 257 of the Criminal Code).

16. He was questioned on several occasions and denied all the charges against him; he also lodged a protest against the wording of the charges.

17. The applicant was granted temporary release for health reasons, though he has not specified the date on which this occurred. He states that since 20 June 1981, when he received an order to appear in court dated 19 June, and until 6 November 1986, when the application to the Commission was introduced, no investigative measures were taken in his case apart from when he was questioned by the investigating judge after presenting himself voluntarily. He also mentions an opinion by a ballistics expert, submitted to the investigating judge on 5 December 1984. On 19 December 1984 the investigating judge decided to delay the deposit of the expert opinion with the court registry, though under the terms of Article 320 of the Code of Criminal Procedure this should have taken place within three days of its submission (to enable the applicant's lawyer to examine it). The investigating judge based his decision on Article 304 quater, fifth paragraph, of the Code of Criminal Procedure, which permits the deposit of such an opinion to be delayed 'if there are serious reasons for doing so'. The applicant states that the opinion had still not been deposited at the date on which the application was introduced.

18. On 26 June 1989 the investigating judge at the Rome Court brought entirely new charges against the applicant, changing both the description of the offences and the date on

which they were alleged to have been committed.

19. On 12 July 1989 the applicant was questioned by the investigating judge. Following the questioning the investigating judge once again changed the alleged date of the offences as it appeared in the summons of 26 June 1989.

20. The applicant also submits that as yet only one of the charges against him has been investigated, though he has also been charged on counts of fraud and espionage prior to 19 March 1979, and also of obtaining public documents by false pretences.

21. By letter of 23 October 1989 the applicant also states that the public prosecutor in charge of this case is absent on maternity leave (her second during this investigation) and that she is not expected to return for at least six months. It will therefore not be possible for the prosecutor's submissions to be brought before the court for another year."

10. According to information supplied to the Court by the Government and the applicant's lawyer the investigation is still pending.

#### PROCEEDINGS BEFORE THE COMMISSION

11. In his application of 6 November 1986 to the Commission (no. 12598/86) Mr Viezzer 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\*.

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\* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 196-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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#### 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

21 May 1981 with the applicant's arrest. It has not yet ended.

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 investigation was undoubtedly of some complexity owing to the nature of the facts to be established, but the applicant did nothing to slow it down and the Court cannot regard as "reasonable" in the instant case a lapse of time for the investigation stage alone which is already more than nine and a half years.

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 Viezzer claimed, without citing any figures, compensation for damage; he referred to the suffering caused by the length of the proceedings instituted against him.

20. The Commission took the view that it was appropriate to award the applicant a substantial sum in respect of non-pecuniary damage.

The Government, on the other hand, considered that, if a violation were to be found, a modest sum would be sufficient. They stressed in addition that Mr Viezzer had supplied no precise information regarding the pecuniary damage alleged.

21. The Court accepts that the applicant clearly suffered non-pecuniary damage; making an assessment on an equitable basis, it awards him 25,000,000 Italian lire under this head.

### B. Costs and expenses

22. Mr Viezzer also claimed 4,800,400 lire for the expenses and fees of the lawyer who represented him before the Court.

23. Having regard to the information available to it, the observations submitted and its case-law in this field, the Court awards him the full amount.

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 Viezzer 25,000,000 (twenty-five million) Italian lire for non-pecuniary damage and 4,800,400 (four million eight hundred thousand and four hundred) lire for costs and expenses.

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