

In the Maj 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,
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 14/1990/205/265. 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. 13087/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Giuseppe Maj, on 18 July 1987.

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 2 May 1990 the President 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, Frau, Ficara, Viezzer, Angelucci, 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), Ficara (11/1990/202/262), Viezzer (12/1990/203/263), Angelucci (13/1990/204/264), 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 9 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 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 Giuseppe Maj, an Italian national, resides in Milan where he is an engineer. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 13-17 of its report, see paragraph 11 below):

"13. On 24 December 1981, the car in which the applicant and two other persons were travelling was stopped and searched at a border post on the Italian-French frontier. In the car the police found a hedge-slashing tool of a prohibited type, 2,270,000 lire (about 12,000 FF) and information material concerning terrorist trials and the conditions of imprisonment of terrorists.

14. The applicant was charged with carrying weapons unlawfully, infringing exchange control regulations and

reasonable conspiracy.

15. On 26 December 1981, the proceedings relating to the weapons offence were referred to the Aosta District Court. On 28 December 1981, the Aosta public prosecutor ordered the applicant's arrest for the other offences and sent the file to the Bergamo public prosecutor's office.

16. A few days after his arrest, on 4 January 1982, the applicant was provisionally released for lack of sufficient evidence.

The Bergamo public prosecutor examined the applicant on 4 January 1982.

17. On 21 February 1985, the prosecution applied for formal proceedings in the case, and the file was sent to the investigating judge on 22 February 1985. On 9 September 1987, the latter discharged the applicant, in the following terms:

'... the variety and quantity of the material seized in the car and in the homes of the accused, their destination (France) ... the applicant's family connections ... and his attitude during the proceedings (even disregarding his replies under questioning, it is enough that [the applicant] refused, in true 'fighting communist' style, to sign the record) show without the shadow of a doubt that the three accused are the waters in which the terrorist fish has for years found a home, and constitute something akin to its placenta.

As for the specific charge ... no new evidence has been obtained different from or additional to that adduced by the prosecution.'

18. ..."

PROCEEDINGS BEFORE THE COMMISSION

10. In his application of 18 July 1987 to the Commission (no. 13087/87) Mr Maj complained of the length of the proceedings conducted against him in Bergamo; he relied on Article 6 para. 1 (art. 6-1) of the Convention.

11. 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-D 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)

12. 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.

13. The period to be taken into consideration began on 24 December 1981, the date of the applicant's arrest. It ended, at the earliest, on 9 September 1987, with the pronouncement that there was no case to answer and, at the latest, on 12 September 1987, when the time-limit for an appeal by the prosecuting authorities against that pronouncement expired (Article 199 of the Code of Criminal Procedure).

14. 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.

15. 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 case was undoubtedly of some complexity owing to the nature of the investigations to be carried out, but the applicant does not appear to have done anything to slow down the progress of the proceedings and there appears to be no justification for the very lengthy period which elapsed between the examination of the applicant by the Bergamo public prosecutor on 4 January 1982 and his discharge on 9 September 1987. It follows that the Court cannot regard as "reasonable" in the instant case a lapse of time of more than five 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)

16. 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 Maj sought, without citing any figures, compensation for damage and the reimbursement of expenses and fees incurred during the proceedings before the Convention organs. On the first point he referred, *inter alia*, to the protracted uncertainty in which he claimed to have lived pending the outcome of the criminal proceedings against him and the harm to his career.

17. The Commission did not formulate any comments, while the Government expressed 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.

18. The evidence does not show that the applicant suffered pecuniary damage deriving from the violation of Article 6 para. 1 (art. 6-1). On the other hand, he must have sustained a degree of non-pecuniary damage and he incurred costs and expenses. Making an assessment on an equitable basis, the Court awards him under these two heads 5,000,000 Italian 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 Maj 5,000,000 (five million) Italian lire for non-pecuniary damage and 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