

In the Girolami 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 15/1990/206/266. 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. 13324/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Dino Girolami, on 8 October 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 19 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 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, Maj, 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), Maj (14/1990/205/265), 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 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 Dino Girolami, an Italian national, resides in Florence. He is a butcher's assistant. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 13-19 of its report, see paragraph 11 below):

"13. The applicant and another person were prosecuted for fraud involving a sum of approximately 50 million Italian lire to the detriment of a co-operative society on the occasion of a transaction concerning the sale of meat produced by the co-operative.

14. Following a complaint by the co-operative society on 10 December 1977, the police drew up a report dated 15 March 1978 which was transmitted to the public prosecutor's office in Cuneo.

The public prosecutor's office instituted proceedings against the applicant and a co-defendant for aggravated fraud. The warrant for the applicant's arrest issued on 25 March 1978 could not be executed, as the applicant had fled.

15. On 16 May 1978 the investigation was entrusted to an investigating judge. On 9 January 1979 counsel for the applicant requested the investigating judge to withdraw the warrant for the applicant's arrest (Article 277 of the Code of Criminal Procedure). The investigating judge withdrew it by decision of 30 May 1979. On 19 November 1979, the applicant appeared before the investigating judge and was questioned. On 5 January 1980 the public prosecutor's office at Cuneo filed its charges and asked that the applicant and his co-defendant be committed for trial.

16. On 24 May 1980 the investigating judge at Cuneo committed the applicant for trial before the Cuneo District Court. The first hearing before the Cuneo court, which had initially been fixed for 11 January 1985, was adjourned at the request of defence counsel, who on that date was involved in another trial. On 14 January 1985 the judge fixed the hearing for 14 June 1985. At this hearing, counsel for the applicant requested an adjournment to enable the applicant, who was serving a prison sentence elsewhere and had at the last moment reversed his decision not to appear, to take part in the proceedings. The hearing was adjourned to 11 April 1986. At this hearing counsel for the co-defendant, with the backing of counsel for the applicant, objected that the Cuneo court did not have territorial jurisdiction.

17. In a judgment of 11 April 1986 (filed with the registry on 24 April), the Cuneo court held that it did not have jurisdiction and ordered the file to be transmitted to the public prosecutor's office at Livorno. The file reached the public prosecutor's office at Livorno on 19 June 1986.

18. The hearing before the Livorno District Court, which had originally been fixed for 7 January 1987, took place on 3 April 1987 because the court was obliged to order witnesses to be brought by force to the hearing.

19. On the same date, the Livorno court acquitted the applicant because of insufficient evidence and convicted his co-defendant of fraud. The judgment, filed with the registry on 11 May 1987, became final with regard to the applicant on 3 May 1987, since no appeal had been made against it."

PROCEEDINGS BEFORE THE COMMISSION

10. In his application of 8 October 1987 to the Commission (no. 13324/87) Mr Girolami complained of the length of the proceedings; 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-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)

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 25 March 1978, the date on which the public prosecutor's office ordered the applicant's arrest. It ended on 3 May 1987; the period for which the applicant was on the run, namely from 25 March 1978 to 30 May 1979, should however be excluded from the calculation.

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 not a complex one and there was a long period of stagnation (24 May 1980 - 11 January 1985). The applicant's flight undoubtedly served to slow down the progress of the proceedings; nevertheless the Court cannot regard as "reasonable" in the instant case the remaining lapse of time, namely approximately eight years.

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."

A. Damage

17. Mr Girolami sought compensation of 3,000,000 Italian lire in respect of non-pecuniary damage. He cited the psychological pressure caused by the wait for the final decision and the fear of being sentenced to a further term of imprisonment in addition to

that which he was already serving in 1985.

18. The Commission did not formulate any comments, whereas the Government took the view that at the most it would be appropriate, if a violation were to be found, to award a modest sum in respect of non-pecuniary damage.

19. The Court accepts that the applicant may have sustained non-pecuniary damage, but, in the circumstances of the case, it considers that the finding of a violation of Article 6 para. 1 (art. 6-1) constitutes in itself sufficient just satisfaction for the purposes of Article 50 (art. 50).

B. Costs and expenses

20. The applicant sought the reimbursement of a total of 1,210,000 lire for costs and expenses relating to the proceedings before the Convention organs, the only proceedings which fall to be taken into account in this respect.

21. 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, as regards non-pecuniary damage the present judgment constitutes in itself sufficient just satisfaction for the purposes of Article 50 (art. 50);
3. Holds that the respondent State is to pay to Mr Girolami 1,210,000 (one million two hundred and ten thousand) Italian 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