

In the Ferraro 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 16/1990/207/267. 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 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13440/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Enrico Ferraro, on 26 November 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 § 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 § 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 § 3).

3. On 21 February 1990 the President decided that, pursuant to Rule 21 § 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, Girolami, 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), Girolami (15/1990/206/266), 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 § 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 § 4) (art. 43).

5. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 § 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 § 1). In accordance with the order made in consequence, the Registrar received the applicant's memorial and his additional observations on 2 and 16 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 1 June 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 G. Mochi, avvocato, Counsel.

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

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

AS TO THE FACTS

9. Mr Enrico Ferraro, an Italian national, resides in Rome. The facts established by the Commission pursuant to Article 31 § 1 (art. 31-1) of the Convention are as follows (paragraphs 14-21 of its report, see paragraph 12 below):

"14. On 3 February 1979 the applicant, who at that time was an inspector with the Ministry of Transport, was questioned by the police in the course of an inquiry into irregular practices allegedly committed in vehicle testing and approval procedures.

Following this questioning, on 7 February 1979 the applicant and numerous other people were reported to the prosecuting authorities.

15. On 8 February 1979 the Rome prosecuting authorities issued an arrest warrant for forgery and corruption against the applicant on a charge of falsely certifying that he had carried out approval tests on a number of vehicles, allegedly at the request of a certain M. who, in return, had supplied him with watches imported from Japan to sell off on the Italian market.

16. The applicant was arrested on an unspecified date and placed in custody until 13 April 1979, when the investigating judge granted his application for bail.

On 8 March 1979 the applicant was suspended from his duties as principal inspector at the Ministry of Transport, with effect from 8 February 1979.

17. The applicant was first questioned on two occasions, on 12 and 26 February 1979, by the public prosecutor; he was then questioned on 6 March 1979 by the investigating judge after the latter had taken over the investigation, then again on 26 March 1979. The Rome prosecuting authorities drew up their final submissions on 31 December 1981. The applicant was committed for trial on 21 July 1982.

18. The first hearing in the Rome District Court, which had been scheduled for 2 May 1983, was adjourned to 31 January 1984, owing to irregularities in the notifications. This second hearing was adjourned to 7 February 1984, owing to the 'precarious' nature of the composition of the court because one of the court's judges was about to be transferred. The trial proper did not begin until a hearing on 7 February 1984. The following hearing, set for 28 May 1984, was adjourned to 3 December 1984. The fact was that the court had learned that a committal for trial was soon to be pronounced in a second set of proceedings, which had been brought against the applicant and others for similar offences, and the court had deemed it advisable to deal with the two cases together.

19. The second set of proceedings had been opened following a police report of 12 April 1980 and concerned testing procedures for cars imported into Italy by a firm called V. The investigation into this case was being conducted by the same investigating judge handling the

investigation in the first case. This judge questioned the applicant on the new charges on 5 June 1980. On 23 February 1984 the prosecuting authorities drew up their final submissions and the committal for trial was pronounced on 28 October 1984.

20. However, the hearing of 3 December 1984, which had been scheduled in order to combine the two cases, had to be adjourned sine die because the court had not yet received the file concerning the second case.

A hearing was scheduled for 22 April 1987, on which date the court ordered that the two sets of proceedings be combined and, at the request of the defendants' lawyers, that examination of the case be adjourned until 13 May 1987.

On 13 May 1987 the court considered that in view of the complexity of the case it would be advisable to adjourn the examination to a hearing on 22 May 1987.

21. The trial hearings took place on 22 May, 27 May and 3 June 1987. At this last hearing the court delivered its judgment in which it purely and simply acquitted the applicant.

In the reasons for its judgment the court noted, *inter alia*, that the technical and legal complexity of the vehicle testing procedures had resulted in a number of misunderstandings during the investigation. The judgment [was] filed with the registry on 17 June 1987

[The applicant's] suspension from the civil service was not revoked until 17 September 1987, following his acquittal."

10. The judgment became final in relation to the applicant on 3 July 1987, when the time-limit for an appeal by the prosecuting authorities expired (Article 199 of the Code of Criminal Procedure).

PROCEEDINGS BEFORE THE COMMISSION

11. In his application of 26 November 1987 to the Commission (no. 13440/87) Mr Ferraro alleged that his detention on remand had not been lawful (Article 5 § 1 of the Convention) (art. 5-1) and that he had had no effective remedy (Article 5 § 4) (art. 5-4). He also complained of a breach of the principle of the presumption of innocence (Article 6 § 2) (art. 6-2), of the unfair nature of his trial and of the length of the proceedings (Article 6 § 1) (art. 6-1).

12. On 5 September 1989 the Commission declared the application admissible as regards the last complaint. On 7 October 1988 it had declared it 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 § 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 197-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 § 1 (art. 6-1)

14. The applicant claimed that his case had not been examined within a "reasonable time" as required under Article 6 § 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 8 February 1979, the date on which the Italian judicial authorities ordered the applicant's arrest; it ended on 3 July 1987 (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 § 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, § 72).

The proceedings were undoubtedly of some complexity owing to the nature of the facts to be established but the applicant did nothing to slow down their progress. The two investigations of the alleged offences extended over a period of approximately five years and eight months from 8 February 1979 to 28 October 1984, after which there was a long period of inactivity in the trial proceedings up until 22 April 1987. It follows that the Court cannot regard as "reasonable" in the instant case a lapse of time of nearly eight years and five months.

There has therefore been a violation of Article 6 § 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 Ferraro claimed compensation of 130,000,000 Italian lire for pecuniary and non-pecuniary damage. He cited the loss of earnings resulting from the temporary loss of his employment and the considerable emotional pressure generated by the length of the proceedings.

20. The Commission took the view that the applicant should be awarded a sum equivalent to half the amount claimed.

The Government, for their part, contended that there was no causal connection between the alleged pecuniary damage and the violation complained of; in their opinion, at the most it would be appropriate, if a violation were to be found, to award a modest sum for non-pecuniary damage.

21. The Court accepts that the failure to conduct proceedings within a reasonable time prejudiced the applicant in relation to his employment and caused him a degree of non-pecuniary damage; making an assessment on an equitable basis, it awards him 60,000,000 lire under this head.

B. Costs and expenses

22. The applicant sought the reimbursement of a total of 6,008,600 lire and 743 French francs in respect of lawyer's fees and the expenses relating to the proceedings before the Commission and 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 § 1 (art. 6-1) of the Convention;
2. Holds that the respondent State is to pay to Mr Ferraro 60,000,000 (sixty million) Italian lire for damage and 6,008,600 (six million eight thousand and six hundred) lire and 743 (seven hundred and forty-three) French francs 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