

In the Mori 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 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 18/1990/209/269. 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. 13552/88) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mrs Bruna Mori, 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 she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30).

3. On 21 February 1990 the President of the Court 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, Ferraro, Triggiani, 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), Ferraro (16/1990/207/267), Triggiani (17/1990/208/268), Colacioppo (19/1990/210/270), Adiletta et autres (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 on 24 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

Mrs W. Viscardini Donà, avvocato, Counsel.

The Court heard addresses by the above-mentioned representatives.

On 25 October and 16 November, 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. Mrs Bruna Mori, an Italian national, resides at Genoa. She is a teacher. The facts established by the Commission pursuant to Article 31 § 1 (art. 31-1) of the Convention are as follows (paragraphs 14-22 of its report, see paragraph 11 below):

"14. Proceedings were brought against the applicant for defamation following a complaint ('querela') lodged with the Genoa prosecuting authorities on 12 January 1981 by X, a judge at the Regional Administrative Court, in which he alleged that the applicant had asserted in insulting terms that he had, out of personal interest, induced the Administrative Court to deliver a judgment unfavourable to the applicant.

15. These proceedings were the outcome of a series of complaints and accusations in which the applicant and X were the active parties.

In a complaint against X, lodged with the Genoa public prosecutor on 3 January 1981, the applicant accused X of intimidating acts towards her.

X was heard by the judicial authorities and, in turn, lodged a complaint against the applicant for false accusation and for defamation in respect of other acts.

A single file was opened concerning the complaints as a whole but no charge was brought against the parties pending further investigation of the facts.

16. The applicant states that she learned by chance in May 1982 that proceedings had been instituted against her.

She was formally notified of the charges against her on 13 October 1982 on the occasion of her examination by the Genoa prosecuting authorities, before which she had appeared voluntarily to this end.

17. The investigation continued. On 9 February 1983, X applied for an extension of the time-limit fixed for the citation of witnesses while intimating that he might withdraw his complaint.

18. On 9 June 1983, the Genoa prosecuting authorities passed the case file to the Genoa magistrate's court ('pretore').

On 21 May 1986, the applicant appeared once more, of her own accord, before the Genoa magistrate's court for examination.

On 23 December 1986, the applicant addressed a letter to the magistrate's court in which she waived the application of an amnesty - provided for by an Act of 16 December 1986 - and called for her discharge or a date to be fixed for a

hearing.

19. On 26 March 1987, the magistrate's court issued a summons for the applicant to appear at a hearing on 27 April 1987.

The hearing took place in two sessions on 27 and 28 April 1987; at the latter session, the applicant was acquitted on the grounds of insufficient evidence ('assoluzione per insufficienza di prove'). The grounds of the judgment were filed with the court registry on 23 May 1987.

20. The applicant appealed against the judgment with a view to obtaining her unqualified acquittal. The Genoa prosecuting authorities appealed to secure her conviction. On 21 July 1987, the file was passed to the District Court sitting in an appellate capacity.

21. On 12 August 1987, the applicant asked for a date to be fixed for the appeal proceedings, noting that the length of proceedings would otherwise prevent her from seeing her innocence established, given that the offence of which she was accused would become time-barred in June 1988.

However, on the date of submission of the application (26 November 1987), no date had yet been fixed for the appeal proceedings. Moreover, the President of the Chamber of the Appeal Court assigned to decide on the case, wishing to withdraw from the case, passed the file to the presiding judge of the Genoa Court so that the latter could decide on the question of his replacement (Article 63 of the Code of Criminal Procedure).

22. On 30 March 1988, the Genoa District Court pronounced the applicant's unqualified acquittal. On 21 April 1988, the prosecuting authorities appealed to the Court of Cassation.

On 22 September 1988, the Court of Cassation, sitting in private, decided that the offence was now time-barred."

PROCEEDINGS BEFORE THE COMMISSION

10. In her application of 26 November 1987 to the Commission (no. 13552/88) Mrs Mori complained of the length of the proceedings. She relied on Article 6 § 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 § 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-C 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

12. 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)

13. The applicant claimed that her 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.

14. The period to be taken into consideration began on 13 October 1982, the date on which the applicant was formally notified of the criminal proceedings. It ended on 22 September 1988 with the Court of Cassation's judgment finding that the offence was time-barred.

15. 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 this case.

16. 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).

In fact it was a very simple case. Moreover, the applicant's conduct did not give rise to any delay and indeed she took steps to expedite the proceedings. It follows that the Court cannot regard as "reasonable" in the instant case a lapse of time of nearly six years.

There has therefore been a violation of Article 6 § 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

17. 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

18. Mrs Mori claimed, without citing any figures, compensation for pecuniary and non-pecuniary damage. She referred to the feeling of uncertainty and anxiety which she had experienced for a long time regarding the outcome and the repercussions of the proceedings instituted against her, and the impossibility of obtaining a final acquittal owing to the fact that the proceedings were time-barred.

19. The Government contended that there had been no pecuniary damage. At the most, in their opinion, it would be appropriate, if a violation were to be found, to award a modest sum for non-pecuniary damage.

20. The Court accepts that the applicant must have suffered some non-pecuniary damage on account of the failure to conduct the proceedings within a reasonable time. Making an assessment on an equitable basis, it awards her 2,000,000 Italian lire under this head.

B. Costs and expenses

21. In respect of the proceedings before the Commission and the Court, the applicant sought the reimbursement of 9,300,000 lire for lawyer's fees and 1,630,000 lire for expenses.

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 her 5,000,000 lire under this head.

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 Mrs Mori 2,000,000 (two million) Italian lire for non-pecuniary damage and 5,000,000 (five 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