

In the Colacioppo 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 19/1990/210/270. 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 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13593/88) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Antonio Colacioppo, on 11 February 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 person who would represent him (Rule 30). On 5 June 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, Girolami, Ferraro, Triggiani, Mori 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), Mori (18/1990/209/269), 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 11 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 Antonio Colacioppo, an Italian national, resides at Ascoli Piceno where he is head of the National Pensions Institute (INPS). The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 14-27 of its report, see paragraph 11 below):

"14. On 1 September 1977 the applicant received, from the Ascoli Piceno public prosecutor's office, judicial notice of the fact that he was under investigation for the offence of extortion ('concussione', Article 317 of the Criminal Code - CC) with the aggravating circumstance that it was a continuing offence (Article 81 of the CC). The prosecution was based on the findings of a police report of 30 August 1977 drawn up as a result of

complaints lodged by two ladies, F. and T., who claimed that the applicant, who was responsible for running a State-subsidised vocational training course, had paid them less than the amount to which they were entitled, but had made them sign receipts for sums substantially larger than those they had actually received.

15. On 28 November 1977 the public prosecutor's office issued a warrant for the arrest of the applicant, who was arrested that day. He was questioned about the incidents of which he had been accused on a date which is not known.

16. On 23 December 1977 the public prosecutor's office transmitted the documents to the investigating judge so that he could take up the case in accordance with the official procedure. The investigating judge filed his conclusions on 24 December 1977 and the public prosecutor lodged his submissions on 11 January 1978.

17. The applicant was released on 20 January 1978 further to an order issued on 13 January 1978 by the Ancona Court of Appeal in response to his appeal against the investigating judge's refusal to accede to his request for provisional release.

18. The applicant was committed for trial to the Ascoli Piceno District Court by means of a decision taken by the Ascoli Piceno investigating judge on 10 March 1978, for the offences of extortion (Article 317 of the CC) and misappropriation detrimental to private individuals (Article 315 of the CC).

19. The applicant was summoned to appear at a hearing to be held at the Ascoli Piceno District Court on 15 June 1983, by an order dated 9 February 1983.

A second hearing should have taken place on 30 November 1983, but the applicant's counsel requested that it be postponed. The request was granted.

20. In any event, on 23 December 1983 the applicant asked the Court of Cassation to refer the case to another court on the grounds that, in view of the way in which the trial and other related proceedings in which he was either the defendant or the party claiming damages, were being conducted and in view of the fact that he was on bad terms with one of the prosecutors, it could reasonably be assumed that the Ascoli Piceno District Court lacked the objectivity needed to deal with his case impartially.

By a judgment dated 24 February 1984, filed with the registry on 10 April 1984, the Court of Cassation rejected this request.

21. At the hearing on 11 April 1984 the defence entered various submissions to the effect that the decision to commit the applicant for trial and the summons ordering him to appear were void. All these submissions were rejected in a decision dated 11 April 1984.

22. There were also hearings at the Ascoli Piceno District Court on 18 April and 4 June 1984. By a judgment dated 4 June 1984, filed with the registry on 30 June 1984, the applicant was found guilty of embezzling public funds ('peculato') with the aggravating circumstance of having persisted in doing so, and was sentenced to two years and one month's imprisonment, fined 300,000 lire and temporarily prohibited from holding public office for a period equal to the length of the prison sentence he had been given.

23. The applicant appealed against the judgment.

By a judgment dated 9 April 1985 (filed with the registry on 18 May 1985), the Ancona Court of Appeal acquitted the applicant on the grounds that there was insufficient evidence to convict him,

after two hearings held on 19 February and 9 April 1985.

24. The prosecution and the accused appealed against the judgment to the Court of Cassation.

The prosecution considered that no grounds had been given for acquitting the applicant for lack of evidence.

The applicant argued that his acquittal should have been unqualified because the evidence and statements by witnesses showed that he had not committed the offences. In any event, the judgments of the lower courts should have been quashed because he had been tried for offences other than those for which he had been committed for trial.

25. By a judgment dated 10 April 1986, filed with the court registry on 25 August 1986, the Court of Cassation upheld, in part, the applicant's appeal and therefore quashed the judgment of the Ascoli Piceno District Court and the Appeal Court judgment. It ordered the referral of the file to the Ascoli Piceno public prosecutor's office for action.

26. The applicant then requested that the case be referred to another court on the grounds that there were legitimate reasons for distrusting the Ascoli Piceno judicial authorities (Article 55 of the Code of Criminal Procedure).

By a decision dated 9 December 1986 the Court of Cassation acceded to his request and referred the case to the Perugia judicial authorities.

27. On 12 November 1987 the Perugia investigating judge, applying an Amnesty Act that had been passed in the meantime by parliament, discharged the accused on the following grounds:

'In the present case there is no question of embezzlement of public funds, but of fraud with an aggravating circumstance. Although this is automatically a ground for prosecution, the offence is covered by the latest Amnesty Act. Because prosecution of the offence is statute-barred because of the amnesty, it is not possible to investigate the merits of the prosecution further. Moreover, it is not possible to issue one of the decrees provided for in Article 152 of the Code of Criminal Procedure, since, in the present case, there is no 'evidence proving that the events did not take place, that the accused did not perpetrate them or that they are not punishable by law ...'."

PROCEEDINGS BEFORE THE COMMISSION

10. In his application of 11 February 1987 to the Commission (no. 13593/88) Mr Colacioppo criticised his arrest and detention on remand. He also complained of the length of the proceedings, relying on Article 6 para. 1 (art. 6-1) of the Convention.

11. 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 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 197-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 1 September 1977, the date on which the applicant received a judicial notification. It ended, at the earliest, on 12 November 1987, with the pronouncement that there was no case to answer, and, at the latest, on 15 November 1987, when the time-limit for an appeal on a point of law by the prosecuting authorities against that pronouncement expired (Article 594 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).

At times the proceedings did progress at a normal rate, in particular at the stage of the cassation proceedings, but the Court cannot regard a lapse of time of more than ten years and two months as "reasonable" in the instant case because it was not a complex one and the applicant's conduct did not give rise to any significant delays.

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 Colacioppo claimed 500,000,000 Italian lire for damage and for

the costs incurred before the national courts.

He did not seek the reimbursement of costs and expenses relating to the proceedings before the Convention organs and this is not a matter which the Court has to examine of its own motion (see, *inter alia*, the Huvig judgment of 24 April 1990, Series A no. 176-B, p. 57, para. 38).

17. The Commission noted in the first place that his case had been amnestied. It also pointed out that part of the alleged pecuniary damage and costs derived from the very fact that proceedings had been instituted and not from their length, that another part was hypothetical and that moreover the applicant had not supplied information on the basis of which an assessment could be made. On the other hand, he had, in its view, sustained non-pecuniary damage.

In the Government's opinion, 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 Court agrees with the view expressed by the Commission and, making an assessment on an equitable basis, it awards the applicant 20,000,000 lire in respect of non-pecuniary damage.

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 Colacioppo 20,000,000 (twenty million) Italian lire for non-pecuniary damage;
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