

In the case of Adiletta and Others*,

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 20/1990/211/271-273. 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 three applications (nos. 13978/88, 14236/88 and 14237/88) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by three Italian nationals, Mrs Anna and Mrs Maria Adiletta and Mr Aniello Agovino, on 11 and 12 March 1988.

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 applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30). On 19 March 1990 the President of the Court granted them 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 Colacioppo* 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), Colacioppo (19/1990/210/270)

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 applicants' lawyers on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the Registrar received the applicants' memorials on 13, 16 and 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 applicants

for Mrs Anna Adiletta
Mr F. Tata, avvocato,

for Mrs Maria Adiletta
Mr T. Apone, avvocato,

for Mr Agovino
Mr P. Cerruti, avvocato,

Counsel.

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

On 25 October and 15 November, respectively, the registry received the observations of the Commission and the Government on the applicants' claims for just satisfaction.

9. On 3 December the President refused to grant the applicants legal aid because they did not satisfy the first of the conditions laid down in Rule 4 para. 2 of the Addendum to the Rules of Court.

AS TO THE FACTS

10. Mrs Anna and Mrs Maria Adiletta, who are Italian nationals and reside in Salerno, and Mr Aniello Agovino, who is also an Italian national and resides in Sarno, are all post-office employees in Salerno. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 13-21 of its report, see paragraph 12 below):

"13. On 23 June 1974 the applicants received notification of the institution of proceedings against them (avviso di reato) informing them that, as the result of a report dated 7 February 1974 by the inspectorate of the Salerno provincial management board of the postal and telecommunications service, proceedings had been instituted against them for signing receipts for pensions paid out by the National Pensions Institute in the space reserved for recipients and for failing to comply with the relevant proxy regulations.

The prosecutions also concerned eight other Salerno postal service officials.

14. A preliminary investigation was opened by the public prosecutor's office on 7 February 1974. On 24 April 1974, acting on instructions from the public prosecutor's office dated 13 February 1974, the police seized the signed receipts which constituted the material evidence and began to question the accused and the witnesses. The applicants were questioned on 7, 25 and 26 November 1974 respectively. On 18 December 1974 the police report was transmitted to the public prosecutor's office.

On 18 January 1975 the investigation was placed in the hands of an investigating judge.

15. The investigating judge questioned the accused and the witnesses on 21 January and 17 October 1980. A handwriting analysis was then produced in just over two months.

On 16 January 1981 the investigating judge repeated the request first made in letters rogatory sent on 20 October 1980, asking the Nocera Inferiore magistrate's court to question one of the accused, who had been prevented by illness from appearing before him.

16. On 29 April 1981 the applicants were committed for trial at the Salerno District Court with eight other accused. The committal order ran to three pages.

17. At the first hearing before the Salerno District Court, arranged for 23 July 1981, the case was adjourned, since the summons concerning one of the accused, who had not appeared, had not been served.

18. At the following hearing, on 16 November 1981, the case was adjourned at the request of the defence counsel for one of the applicants and of two other accused. This happened again at the hearing on 18 January 1982. On 22 March 1982 the hearing was adjourned because some of the accused were absent. On 25 May 1982 the defence asked for the hearing to be adjourned so that the handwriting expert could be questioned. The hearing scheduled for 22 June 1982 could not take place because the members of the judiciary in Salerno were holding a meeting. On 25 October 1982 defence counsel requested a report by a panel of handwriting experts. On 30 November 1982 the hearing had to be adjourned because the composition of the court had changed. On 7 February 1983 the hearing had to be adjourned once again because the experts appointed by the court had not appeared. On 7 March 1983 the court issued terms of reference to the experts. Their report was filed on 15 April 1983. On 14 June 1983 the defence asked for further investigative measures to be undertaken. On 15 November 1983 the hearing was again adjourned with the agreement of the parties. On 27 February 1984 the case had to be put back on the list for trial *de novo* because it was impossible to reconstitute the court with its original membership since the President had been transferred to another post.

19. On 24 September 1984 one of the defence counsel pleaded nullity of the committal order and the prosecution called for charges to be preferred for false representation in an official document (*falso ideologico*). The case was referred back to the investigating judge for him to conduct further investigations.

The applicants and the other accused persons were once again committed for trial on 27 June 1986. The order committing them for trial, which concerned eight other accused persons, ran to four pages.

20. On 16 September 1987 the Salerno District Court discharged the applicants and the other accused using the formula '*perché il fatto non sussiste*' (because no offence has been committed).

The judgment, in manuscript form, ran to five pages.

21. The Salerno public prosecutor and the principal public prosecutor at the Salerno Court of Appeal lodged an appeal against the judgment of the District Court but subsequently withdrew it.

The judgment became final on 23 November 1987."

PROCEEDINGS BEFORE THE COMMISSION

11. In their applications of 11 and 12 March 1988 to the Commission (nos. 13978/88, 14236/88 and 14237/88) Mrs Anna and Mrs Maria Adiletta and Mr Agovino complained of the length of the proceedings; they relied on Article 6 para. 1 (art. 6-1) of the Convention.

12. After having ordered the joinder of the applications on 7 October 1988, the Commission declared them admissible on 5 September 1989. 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-E 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 PARA. 1 (art. 6-1)

14. The applicants claimed that their 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.

15. The period to be taken into consideration began on 23 June 1974, when the applicants received notice of the criminal proceedings; it ended on 23 November 1987, the date on which the Salerno District Court's judgment became final.

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 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 of some complexity, in particular at the stage of the preliminary investigation. In addition, the applicants themselves caused delays by several requests for the hearing to be adjourned. Nevertheless, the Court cannot regard as "reasonable" in the instant case a lapse of time of thirteen years and five months. The proceedings were characterised by lengthy periods of inactivity. In particular there was a delay of five years (from January 1975 to January 1980) between the placing of the case in the hands of the investigating judge and the questioning of the accused and witnesses, for which no explanation has been given by the Government. On 24 September 1984 the case was again referred to the investigating judge and a further period of one year and nine months elapsed before the applicants were once more committed for trial.

There has therefore been a violation of Article 6 para. 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. Mrs Anna and Mrs Maria Adiletta and Mr Agovino each claimed compensation of 200,000,000 Italian lire for pecuniary and non-pecuniary damage. They cited the difficulties which they had encountered as a result of the length of the proceedings.

20. In the Government's view there was no evidence of pecuniary damage. At the most it would, in their opinion, be appropriate, if a violation were to be found, to award a modest sum for non-pecuniary damage.

21. On the first point the Court agrees with the Government. On the second, it shares the Commission's opinion that the applicants' claims are excessive. Making an assessment on an equitable basis, it awards each of them 15,000,000 lire for non-pecuniary damage.

B. Costs and expenses

22. The applicants sought the reimbursement of costs and expenses incurred in the Strasbourg proceedings.

Their claims were as follows:

(a) for Mrs Maria Adiletta, 10,800,000 lire for lawyer's fees and expenses relating to the procedure before the Court;

(b) for Mrs Anna Adiletta, 13,200,000 lire for lawyer's fees before the Commission and the Court and 2,150,000 lire for expenses;

(c) for Mr Agovino, 7,800,000 lire for lawyer's fees and expenses relating to the procedure before the Court;

together with value-added tax and the contribution payable to the National Sickness and Pensions Fund.

23. 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 each of the applicants 4,000,000 lire in respect of costs and expenses.

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 each of the three applicants 15,000,000 (fifteen million) Italian lire for non-pecuniary damage and 4,000,000 (four million) lire for costs and expenses;

3. Dismisses the remainder of the claims 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