

In the case of Testa v. Italy*,

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 Thór Vilhjálmsson,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr B. Walsh,
Mr C. Russo,
Mr A. Spielmann,
Mr N. Valticos,
Mr S.K. Martens,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 28 October and 27 November 1991,

Delivers the following judgment, which was adopted on the last-mentioned date:

Notes by the Registrar

* The case is numbered 53/1991/305/376. 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 19 April 1991 by the European Commission of Human Rights ("the Commission"), within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 12786/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Giancarlo Testa, on 5 March 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. On 23 April 1991 the President of the Court decided that, pursuant to Rule 21 para. 6 of the Rules of Court and in the interests of the proper administration of justice, this case and the cases of Gilberti, Nonnis, Trotto, Nibbio, Borgese, Biondi, Macaluso, Monaco, Cattivera, Seri, Manunza, Gori, Casadio, Lestini,

Covitti, Zonetti, Simonetti and Dal Sasso¹ should be heard by the same Chamber.

¹ Gilberti (19/1991/271/342); Nonnis (23/1991/275/346); Trotto (26/1991/278/349); Nibbio (28/1991/280/351); Borgese (29/1991/281/352); Biondi (30/1991/282/353); Monaco (32/1991/284/355); Cattivera (34/1991/286/357); Seri (35/1991/287/358); Manunza (37/1991/289/360); Gori (45/1991/297/368); Casadio (52/1991/304/375); Testa (53/1991/305/376); Lestini (54/1991/306/377); Covitti (55/1991/307/378); Zonetti (56/1991/308/379); Simonetti (57/1991/309/380); Dal Sasso (60/1991/312/383)

3. 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 the same day, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Matscher, Mr J. Pinheiro Farinha, Mr L.-E. Pettiti, Mr B. Walsh, Mr N. Valticos and Mr S.K. Martens (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Subsequently, Mr A. Spielmann, substitute judge, replaced Mr Pinheiro Farinha, who had resigned and whose successor at the Court had taken up his duties before the deliberations on 28 October (Rules 2 para. 3 and 22 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Deputy Registrar, consulted the Agent of the Italian Government ("the Government") and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). In accordance with the order made in consequence, the Registrar received the Government's memorial on 16 July 1991. By a letter received on 22 September, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. On 22 April the Registrar had sent to the applicant the enquiry provided for in Rule 33 para. 3 (d). After several telephone conversations, Mr Testa's lawyer replied in writing, on 7 October, that his client had not manifested an interest in the proceedings pending before the Court.

Accordingly, the President instructed the Registrar to obtain the opinion of the Government and the Delegate of the Commission regarding the possibility of striking the case out of the list (Rule 49 para. 2). Their observations reached the registry on 16 and 17 October.

6. On 24 October the Chamber decided to dispense with the hearing fixed for 28 October, having found that the conditions for such derogation from the usual procedure were satisfied (Rules 26 and 38).

AS TO THE FACTS

7. Mr Giancarlo Testa is an Italian national and resides in Rome. He is a train driver. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 17-21 of its report):

"17. On 21 May 1985 the applicant, having suffered an accident at work, took proceedings before the Rome magistrate's court ('pretore') against the railway company ('Azienda delle Ferrovie

dello Stato'), claiming payment of a temporary disability allowance.

18. The investigation opened at the hearing of 25 September 1985, when the magistrate's court ordered a medical opinion. Two further hearings took place on 18 December 1985 and 19 March 1986. On the latter date, the magistrate's court ordered the railway company to pay the applicant the benefit claimed. The text of the decision was lodged with the registry on 12 May 1986.

19. On 9 October 1986 the railway company appealed against the decision and on 13 October 1986 the presiding judge of the Rome District Court fixed a hearing before the competent chamber of the court for 15 November 1988.

20. On that date, the court chamber ordered a further medical opinion and an expert was summoned to the hearing of 12 January 1989.

21. A hearing took place on 11 May 1989, when the court deliberated. At the close of the hearing, the appeal was dismissed. The text of the appeal judgment was lodged with the registry on 30 June 1990.

22. ... "

8. According to the information supplied by the Government to the European Court, the District Court's decision has not been the subject of an appeal to the Court of Cassation.

PROCEEDINGS BEFORE THE COMMISSION

9. In his application of 5 March 1987 to the Commission (no. 12786/87), Mr Testa complained of the length of the civil proceedings brought by him; he relied on Article 6 para. 1 (art. 6-1) of the Convention.

10. On 11 May 1990 the Commission declared the application admissible. In its report of 5 March 1991 (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 223-J 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

11. By a letter of 7 October 1991 Mr Angelozzi, counsel for Mr Testa before the Commission, informed the Court that, when he had contacted his client in good time with a view to his participation in the proceedings, the latter had shown no interest. He confirmed this at the hearing on 28 October in the Nibbio, Borgese, Biondi, Monaco and Lestini v. Italy cases.

The Government were consulted on whether the case should be struck out of the list pursuant to Rule 49 para. 2 of the Rules of Court and answered in the affirmative, in view of the applicant's "expressed intention of withdrawing".

The Delegate of the Commission considered that the information received from Mr Angelozzi gave insufficient details concerning the real intentions of the applicant: it was not possible to determine

therefrom whether there was indeed a "fact of a kind to provide a solution of the matter" (Rule 49 para. 2). Furthermore, the Delegate questioned whether it was possible to regard Mr Testa, despite his "apparent silence", as having lost "any legal interest in having the violation of the Convention ... established". In any event "the absence of a clear and unequivocal manifestation of intention" precluded, in his view, saying that there had been a withdrawal, "even an implied one". Moreover the present case was one of a number of cases which "should be placed in a context that goes well beyond the interest of each applicant".

12. According to Rule 49 para. 2 of the Rules of Court:

"When the Chamber is informed of a friendly settlement, arrangement or other fact of a kind to provide a solution of the matter, it may, after consulting, if necessary, the Parties, the Delegates of the Commission and the applicant, strike the case out of the list."

Notwithstanding several reminders from the registry over a period of five and a half months, and therefore well in excess of the usual period of two weeks prescribed in Rule 33 para. 3 (d), the applicant showed no interest in the proceedings before the Court. In formal terms there has not been a withdrawal for the purposes of paragraph 1 of Rule 49 inasmuch as the applicant does not have the status of a party to the proceedings, since Protocol No. 9 (P9), which gives the individual applicant the right, subject to certain conditions, to bring his case before the Court, has not yet come into force (see the Owners' Services Ltd v. Italy judgment of 28 June 1991, Series A no. 208-A, p. 8, para. 10). The Court considers nevertheless that there has been in this case an implied withdrawal which constitutes a "fact of a kind to provide a solution of the matter". It may indeed be questioned whether there can still be said to be any dispute.

In addition, the Court discerns no reason of ordre public (public policy) for continuing the proceedings (Rule 49 para. 4). In this connection it points out that in a number of previous cases it had occasion to review the "reasonableness" of the length of civil proceedings in various Contracting States, including Italy (see, with regard to that country, the Pretto and Others judgment of 8 December 1983, the Capuano judgment of 25 June 1987, the Brigandi, Zanghi and Santilli judgments of 19 February 1991 and the Pugliese (II), Caleffi and Vocaturo judgments of 24 May 1991, Series A nos. 71, 119, 194-B-C-D and 206-A-B-C). In so doing it specified the nature and the extent of the obligations arising in this context from Article 6 para. 1 (art. 6-1) of the Convention. Furthermore, a large number of cases which raise similar questions and in which it is shortly to give judgment are still pending before it. Finally, according to information provided by the Delegate of the Commission, 410 applications concerning compliance with the "reasonable time" requirement, in Italy, are pending before the Commission.

Accordingly, the case should be struck out of the list. The Court nevertheless reserves the right to restore the case to the list if a new situation arises capable of justifying such a course.

FOR THESE REASONS AND WITH THIS RESERVATION, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of the Rules of Court on 3 December 1991.

Signed: Rolv RYSSDAL

President

Signed: Marc-André EISSEN
Registrar