

In the Owners' Services Ltd 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 B. Walsh,
Mr J. Pinheiro Farinha,
Mr R. Bernhardt,
Mr C. Russo,
Mr A. Spielmann,
Mr I. Foighel,
Mr J.M. Morenilla,
Mr F. Bigi,

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

Having deliberated in private on 28 June 1991,

Delivers the following judgment, which was adopted on that date:

Notes by the Registrar

* The case is numbered 9/1991/261/332. 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 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 8 March 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 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12144/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by a company incorporated under English law, Owners' Services Ltd, on 13 March 1986.

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 Diana, Ridi, Casciaroli, Manieri, Mastrantonio,

Idrocalce S.r.l., Cardarelli, Golino, Taiuti, Maciariello, Manifattura FL, Steffano, Ruotolo, Vorrasi, Cappello, G. v. Italy, Caffè Roversi S.p.a., Andreucci, Gana, Barbagallo, Cifola, Pandolfelli and Palumbo, Arena, Pierazzini, Tusa, Cooperativa Parco Cuma, Serrentino, Cormio, Lorenzini, Bernardini and Gritti and Tumminelli* should be heard by the same Chamber.

* Cases of Diana (3/1991/255/326), Ridi (4/1991/256/327), Casciaroli (5/1991/257/328), Manieri (6/1991/258/329), Mastrantonio (7/1991/259/330), Idrocalce S.r.l. (8/1991/260/331), Cardarelli (10/1991/262/333), Golino (11/1991/263/334), Taiuti (12/1991/264/335), Maciariello (13/1991/265/336), Manifattura FL (15/1991/267/338), Steffano (16/1991/268/339), Ruotolo (18/1991/270/341), Vorrasi (20/1991/272/343), Cappello (22/1991/274/345), G. contre Italie (24/1991/276/347) Caffè Roversi S.p.a. (25/1991/277/348), Andreucci (33/1991/285/356), Gana (36/1991/288/359), Barbagallo (38/1991/290/361), Cifola (40/1991/292/363), Pandolfelli and Palumbo (41/1991/293/364), Arena (42/1991/294/365), Pierazzini (43/1991/295/366), Tusa (44/1991/296/367), Cooperativa Parco Cuma (50/1991/302/373), Serrentino (51/1991/303/374), Cormio (58/1991/310/381), Lorenzini, Bernardini and Gritti (59/1991/311/382), Tumminelli (61/1991/313/384).

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 23 April 1991, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr J. Pinheiro Farinha, Sir Vincent Evans, Mr A. Spielmann, Mr I. Foighel, Mr J. Morenilla and Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr B. Walsh and Mr R. Bernhardt, substitute judges, replaced Sir Vincent Evans, who had resigned and whose successor at the Court had taken up his duties before the deliberations, and Mr Matscher, who was unable to take part in the further consideration of the case (Rules 2 para. 3, 22 para. 1 and 24 para. 1).

4. In response to the enquiry made in accordance with Rule 33 para. 3 (d), the applicant company informed the Registrar on 13 May 1991 of its decision to "withdraw" and not to seek just satisfaction. At the same time it notified him that it had changed its name and was now called Rank Travel Ltd.

5. 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 possibility of the case being struck out of the list (Rule 49 para. 2). The Registrar received their observations on 7 and 4 June respectively.

AS TO THE FACTS

6. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-22 of its report - see paragraph 8 below):

"16. By summons served on 13 March 1982, the applicant took proceedings before the Salerno court against the I. company to recover 29,850,000 lire which it had paid in error and which the defendant refused to refund.

17. The investigation began at the hearing of 28 April 1982. The next hearing took place on 29 September 1982,

when the parties requested an adjournment. At the hearing on 1 December 1982, the defendant requested an expert opinion. The applicant, however, asked that a hearing date be set for the submission of final pleas. The court reserved its decision and subsequently, on 2 February 1983, asked the applicant company whether it accepted the Italian translation, in the defendant's file, of certain documents originally in English.

18. The court ordered the adjournment of the next hearing, due to take place on 6 April 1983, to 29 June 1983 and subsequently to 23 November 1983 and 18 April 1984, for reasons not mentioned in the records of the hearings in question. The Government have nevertheless stated that the adjournments were prompted by the investigating judge's unavailability and by the suspension of court business at election time.

19. The investigation proceeded at the hearings on 18 July 1984, 10 October 1984 and 3 April 1985. On 13 November 1985 the investigation was concluded and the case was referred to the appropriate Chamber of the court.

20. The hearing before that Chamber was fixed for 3 February 1987. On 9 December 1985 the applicant requested an earlier date. In compliance with the request, the presiding judge of the court brought the hearing forward to 7 October 1986.

21. On 2 December 1986 the court allowed the applicant's claim for reimbursement. The text of the decision was lodged with the registry on 6 March 1987.

22. On 2 June 1987 the applicant agreed to a friendly settlement of the case."

PROCEEDINGS BEFORE THE COMMISSION

7. In his application of 13 March 1986 to the Commission (no. 12144/86), the applicant company complained of the length of the civil proceedings brought by it. It relied on Article 6 para. 1 (art. 6-1) of the Convention.

8. On 11 May 1990 the Commission declared the application admissible. In its report of 15 January 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 208 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

9. In a letter of 13 May 1991 the applicant company informed the Court of its wish to "withdraw" and its decision not to seek just satisfaction.

The Government were consulted and expressed the view that the case should be struck out of the list pursuant to Rule 49 para. 2 of the Rules of Court. The Delegate of the Commission indicated that he had no objection to the application of that provision, which is worded as follows:

"...

2. 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.

... "

10. Although the applicant's decision does not strictly speaking constitute a withdrawal, since it was not taken by a party to the case in view of the fact that Protocol No. 9 (P9) has not yet come into force (Rule 1 (h) and (k) and see the De Becker judgment of 27 March 1962, Series A No. 4, p. 23, para. 4), it is in any event a "fact of a kind to provide a solution of the matter". In addition the Court discerns no reason of ordre public (public policy) for continuing the proceedings (Rule 49 para. 4).

Accordingly the case should be struck out of the list.

FOR THESE REASONS, 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 28 June 1991.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar