

In the Vocaturo 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 J. Cremona,  
Mr Thór Vilhjálmsson,  
Mrs D. Bindschedler-Robert,  
Mr F. Gölcüklü,  
Sir Vincent Evans,  
Mr C. Russo,  
Mr S.K. Martens,  
Mr J.M. Morenilla,

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

Having deliberated in private on 25 January and 24 April 1991,

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

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#### Notes by the Registrar

\* The case is numbered 28/1990/219/281. 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.

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#### PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 21 May 1990, 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. 11891/85) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by a national of that State, Mr Nicola Vocaturo, on 20 September 1985.

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's wife informed the registry on 25 July 1990 that her husband had died; she stated that she wanted the proceedings to continue and wished to take part in them and be represented by the lawyer she had designated (Rule 30). For reasons of convenience Mr Vocaturo will continue to be

referred to in this judgment as the applicant, although it is now his widow who is to be regarded as having this status (see, among other authorities, the Colozza judgment of 12 February 1985, Series A no. 89, p. 7, para. 6).

Subsequently, the President gave Mrs Vocaturo and her lawyer leave to use the Italian language (Rule 27 para. 3).

3. On 24 May 1990 the President of the Court decided that, in the interests of the proper administration of justice, this case - together with the Pugliese (II) and Caleffi cases\* - should be considered by the Chamber constituted on 26 March 1990 to hear the Brigandi, Zanghi and Santilli cases\*\* (Rule 21 para. 6). It 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)). The other seven members, whose names had been drawn by lot, were Mr J. Cremona, Mr Thór Vilhjálmsson, Mrs D. Bindschedler-Robert, Mr F. Gölcüklü, Mr R. Bernhardt, Mr S.K. Martens and Mr J.M. Morenilla (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Sir Vincent Evans, substitute judge, replaced Mr N. Valticos who was unable to take part in the further consideration of the case and had initially replaced, for the same reason, Mr Bernhardt (Rules 22 para. 1 and 24 para. 1).

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Notes by the Registrar

\* 25/1990/216/278 and 27/1990/218/280

\*\* 2/1990/193/253, 3/1990/194/254 and 5/1990/196/256

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4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, through the Registrar, consulted the Agent of the Italian Government ("the Government"), the Delegate of the Commission and the lawyer for the applicant 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 28 September 1990 and the Government's memorial on 15 November. In a letter received on 18 January 1991 the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President had directed on 21 November 1990 that the oral proceedings should open on 22 January 1991 (Rule 38).

6. On 27 November 1990 the Commission produced the file on the proceedings before it, as the Registrar had requested on the President's instructions.

7. On 15, 17 and 21 January 1991 five trade union associations (the provincial organisations of the Confederazione Generale Italiana del Lavoro, Confederazione Italiana Sindacati Lavoratori and Unione Italiana Lavoratori, and also the Associazione sindacale aziende petrolifere and Consorzio industriale zona Ariccia, castelli Romani e aree limitrofe) sought leave under Rule 37 para. 2 to submit written comments. On 22 January the President decided not to grant them leave.

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, on secondment to the Diplomatic Legal Service, Ministry of Foreign Affairs,	Co-Agent,
Mr G. Manzo, magistrato, on secondment to the Ministry of Justice,	Counsel;

(b) for the Commission

Mr G. Sperduti,	Delegate;
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(c) for the applicant

Mr M. de Stefano, avvocato,	Counsel,
Mr R. Vaccarella, avvocato,	Adviser.

The Court heard addresses by them, as well as their replies to its questions.

#### AS TO THE FACTS

9. Mr Nicola Vocaturo, an Italian citizen, lived in Rome until his death. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 15-20 of its report - see paragraph 11 below):

"15. On 26 June 1973, Mr B. brought an action before the Rome District Court against the "Istituto Nazionale delle Assicurazioni" (I.N.A.) and against the applicant, the I.N.A.'s property manager. He sought recognition of his status as an employee and asked that the I.N.A. and the applicant, as employers, be ordered to pay the differences in remuneration to which he claimed to be entitled in respect of work carried out between 1969 and 1972 at the I.N.A.'s property management office.

16. Two hearings took place before the investigating judge on 2 October and 4 December 1973. A third hearing, set for 30 April 1974, did not take place since the examination of the case had been suspended following the entry into force of Act no. 533/1973.

17. That Act reformed the procedure in labour relations cases and amended the rules of jurisdiction in this area, jurisdiction being given to the magistrate's court (pretore) at first instance and to the District Court on appeal. For proceedings pending, section 20 of the Act provided that these were not to be subject to the changes in jurisdiction, and authorised the investigating judge to rule himself, sitting as a single judge, in cases pending at first instance before the District Court which had not yet reached decision stage.

18. The examination of the applicant's case was resumed only on 6 February 1978, and on 25 September 1978 he was ordered to pay 3,524,395 Italian lire, adjusted to allow for currency devaluation and to include interest at the statutory rate.

19. On 17 October 1979 the applicant appealed to the Rome Court of Appeal. On 28 March 1980 the Court dismissed his appeal and ordered him and the I.N.A. jointly and severally to pay 7,133,925 lire, adjusted to allow for currency devaluation and to include interest at the statutory rate.

20. On 20 March 1981 the applicant appealed to the Court of Cassation. The hearing before the Court of Cassation took place on 29 April 1985. Following that hearing the Court

dismissed the appeal. The text of the judgment was deposited with the registry on 27 November 1985."

#### PROCEEDINGS BEFORE THE COMMISSION

10. In his application of 20 September 1985 to the Commission (no. 11891/85), Mr Vocaturo complained of the length of the civil proceedings brought against him by Mr B. He relied on Article 6 para. 1 (art. 6-1) of the Convention.

11. The Commission declared the application admissible on 10 March 1989. In its report of 6 March 1990 (made under 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\*.

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\* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 206-C of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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#### FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

12. At the hearing on 22 January 1991 the Government confirmed the final submissions in their memorial, and asked the Court to hold that "there [had] been no breach of the Convention".

#### AS TO THE LAW

##### I. ALLEGED VIOLATION OF ARTICLE 6 para. 1 (art. 6-1)

13. Mr Vocaturo complained that the civil action brought against him by Mr B. had not been tried within a "reasonable time" as required under Article 6 para. 1 (art. 6-1) of the Convention, according to which:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The Government disputed this view; the Commission on the other hand agreed with it.

14. The period to be taken into consideration began not on 26 June 1973 when the action against the applicant and I.N.A. was commenced in the Rome District Court, but on 1 August 1973 when the Italian declaration recognising the right of individual petition took effect. In order to determine whether the length of time which elapsed after that date was reasonable, regard must be had, however, to the state of the case at that time (see, in particular, the Brigandi judgment of 19 February 1991, Series A no. 194-B, p. 31, para. 28).

The relevant period ended when the Court of Cassation's judgment was deposited on 27 November 1985.

15. The reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case and the criteria laid down in the Court's case-law (see, inter alia, the H. v. France judgment of 24 October 1989, Series A no. 162, p. 21, para. 50).

16. As to the proceedings in the Rome District Court, the Government maintained that their progress had been retarded by the

coming into force in 1973 of new legislation on labour disputes which introduced jurisdictional changes. This was an exceptional factor to be taken into account. The period of over four years which it took the Court of Cassation to hold a hearing and to come to a decision was attributable to that Court's excessive workload and the duty in general to examine cases in the order in which they were received. In this respect the Government attached great weight to the fact that Mr Vocaturo did not request priority treatment for the case.

The applicant conceded for his part that responsibility for the periods between 20 October 1978 and 17 October 1979 and between 9 May 1980 and 20 March 1981 could not be attributed to the Italian authorities; he needed them for preparing the subsequent stages of the proceedings and negotiating with the opposing party. He also accepted that the Court of Appeal had reached a decision within a reasonable time.

17. As regards the excessive workload, the Court points out that under Article 6 para. 1 (art. 6-1) of the Convention everyone has the right to a final decision within a reasonable time in the determination of his civil rights and obligations. It is for the Contracting States to organise their legal systems in such a way that their courts can meet this requirement (see, most recently, the Santilli judgment of 19 February 1991, Series A no. 194-D, p. 61, para. 20).

Employment disputes by their nature call generally for expeditious decision (see in particular, *mutatis mutandis*, the Obermeier judgment of 28 June 1990, Series A no. 179, p. 23, para. 72). The Italian authorities moreover acknowledged this by amending the special procedure used in such cases in 1973; the changes introduced included a shortening of the time-limits normally applicable in civil proceedings. In the present case none of them was complied with. This happened in particular at first instance and in the Court of Cassation; at both of those levels there was a period of stagnation of over four years.

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

## II. APPLICATION OF ARTICLE 50 (art. 50)

18. According to 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. The applicant claimed 500,000 Italian lire in respect of pecuniary damage and 10,000,000 lire for non-pecuniary damage.

According to the Government, Mr Vocaturo did not suffer any damage; if a finding were made that there had been a violation, such a finding would in itself constitute adequate just satisfaction for the non-pecuniary damage.

The Commission left the matter to be determined by the Court.

The Court finds that the compensation sought in respect of

pecuniary damage is justified. It also considers that the applicant undoubtedly suffered non-pecuniary loss. Making an assessment on an equitable basis, it awards him the sum claimed under this head.

#### B. Costs and expenses

20. Mr Vocaturo also claimed 3,000,000 lire for costs and expenses incurred before the Convention organs.

Having regard to the evidence in its possession and its relevant case-law, the Court awards him the amount claimed.

#### C. Publication of the judgment

21. Finally, the applicant requested that the present judgment be published in the Gazzetta Ufficiale della Repubblica italiana and in the principal national daily newspapers. The Commission's Delegate made no observations on this point.

The Court, agreeing with the Government, finds that it has no jurisdiction under the Convention to order the Italian State to take such measures (see, *mutatis mutandis*, the Zanghì judgment of 19 February 1991, Series A no. 194-C, p. 48, para. 26).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 para. 1 (art. 6-1);
2. Holds that the respondent State is to pay to Mrs Vocaturo 10,500,000 (ten million five hundred thousand) Italian lire in respect of damage and 3,000,000 (three 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 24 May 1991.

Signed: Rolv RYSSDAL  
President

Signed: Marc-André EISSEN  
Registrar