

In the Pugliese (II) 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:

Notes by the Registrar

- * The case is numbered 25/1990/216/278. 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 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. 11671/85) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by a national of that State, Mr Vincenzo Pugliese, on 29 June 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 stated that he did not wish to take part in the proceedings.

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 Caleffi and Vocaturo 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).

Notes by the Registrar

* 27/1990/218/280 and 28/1990/219/281

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

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, through the Registrar, consulted the Agent of the Italian Government ("the Government") and the Delegate of the Commission on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the Registrar received the Government's memorial on 15 November 1990. 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. In the meantime, on 16 August 1990, the applicant had sent the Registrar his claims for just satisfaction under Article 50 (art. 50) of the Convention (Rules 50 and 1 (k) taken together).

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

7. On 27 November 1990, the Commission produced the file on the proceedings before it, as the Registrar had requested 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, 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.

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

AS TO THE FACTS

9. Mr Vincenzo Pugliese, an Italian citizen, lives in Rome, where he works as a journalist.

On 6 February 1984 he obtained from the President of the Rome District Court an order for payment against Società generale per lavori agricoli ed industriali (Sogelai), and served it on Sogelai on 8 March 1984. It was for 27,712,545 Italian lire, as reimbursement of the expenses incurred by him as a director of that company.

10. On 26 March the company applied for the order to be set aside and summoned Mr Pugliese to appear before the Rome District Court on 25 June 1984.

A first investigative hearing took place before the judge responsible for preparing the case for trial (giudice istruttore) on 26 June 1984. A Mrs F. intervened in the case and put forward her own claim to the sum demanded by the applicant, maintaining that she had purchased his shares in Sogelai. The judge arranged a second hearing for 19 October 1984. At the third hearing on 22 May 1985 the parties lodged their submissions; the judge sent the case for trial before the District Court and fixed the hearing for 21 April 1987.

The judgment was adopted on 22 May 1987 and filed with the registry on 10 July 1987. The District Court declared the disputed order void and upheld Mrs F.'s claim to the sum in question. Accordingly, it ordered Sogelai to pay it to Mrs F.; Mr Pugliese was to pay costs.

11. The judgment became final one year after it was pronounced, i.e. on 10 July 1988.

PROCEEDINGS BEFORE THE COMMISSION

12. In his application of 29 June 1985 to the Commission (no. 11671/85), Mr Pugliese complained of the length of the civil proceedings brought against him by Sogelai. He relied on Article 6 para. 1 (art. 6-1) of the Convention.

13. 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*.

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

FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

14. 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)

15. Mr Pugliese complained that the civil action brought against him by Sogelai 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.

16. The period to be taken into consideration began on 6 February 1984, the date of the order to pay, and ended on 10 July 1988 when the Rome District Court's judgment became final.

17. The reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case and of 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).

18. The Government maintained that the length of the proceedings in question was due to the case's complexity (resulting from Mrs F.'s intervention) and to the excessive workload of the relevant Chamber at the Rome District Court.

19. The Court notes that Mrs F.'s intervention did not give rise to any special complexity. As to the Government's second argument, the Court points out that under Article 6 para. 1 (art. 6-1) 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).

In the present case the time taken for the investigative stage (26 June 1984 to 22 May 1985) does not appear excessive, but the same cannot be said of the period of almost two years (22 May 1985 to 21 April 1987) which then elapsed until the hearing before the trial court.

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

II. APPLICATION OF ARTICLE 50 (art. 50)

20. 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."

As compensation for damage Mr Pugliese claimed a sum corresponding to the amount fixed in the order to pay

(27,712,545 Italian lire) plus interest, together with 2,761,930 lire for the costs and expenses relating to the proceedings in the national court. He also sought to be reimbursed the costs said to have been incurred by him before the Court.

The Government for their part denied that there had been pecuniary damage, and the commission left it to the Court to decide.

21. The Court sees no causal link between the violation found and either the alleged damage or any costs relating to the domestic proceedings. As regards costs referable to the Court's proceedings, in which Mr Pugliese took no part, he has not specified any figure. He is therefore not entitled to the reimbursement sought.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 para. 1 (art. 6-1);
2. Dismisses 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