

In the Caleffi 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 27/1990/218/280. 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. 11890/85) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by a national of that State, Mr Massimo Caleffi, 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 stated that he wished to take part in the proceedings and designated his lawyer (Rule 30). On 25 July 1990 the President gave him 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 Vocaturò cases\* - should be considered by the Chamber constituted on 26 March 1990 to hear the Brigandì, Zanghì 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 28/1990/219/281

\*\* 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;  
(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 Massimo Caleffi, an Italian citizen, lives in Rome. 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 21 November 1977 the applicant brought an action against [Società italiana degli autori ed editori (S.I.A.E.)], by which he was employed, before the Rome magistrate's court (pretore), seeking recognition of his right to a professional qualification corresponding to the work he had been doing since 1 April 1972 and payment of a sum equivalent to the resulting difference in remuneration.

16. On 26 September 1979 the Court ordered [S.I.A.E.] to pay the sum of 15,433,243 Italian lire, calculated to allow for inflation and including interest at the statutory rate.

17. [S.I.A.E.] made the payment but on 18 December 1979 it appealed against the magistrate's court's decision. This decision was completely reversed by a decision of the Rome District Court of 20 May 1980, which refused all the applicant's demands. The text of the decision was deposited with the registry on 27 September 1980.

18. On 19 December 1980 the applicant appealed to the Court of Cassation. On 6 February 1984 the Court of Cassation granted the appeal and referred the case to the Velletri District Court. The text of the judgment was deposited with the registry on 17 April 1984.

19. On 11 April 1985 the applicant requested the court to which the case had been referred to order [S.I.A.E.] to pay the sum of 79,311,490 lire, which he alleged was due to him for the period from 1979 until his retirement on 8 February 1983.

20. The hearing before the relevant division of the court was set for 16 December 1985. On 29 May 1985 the parties' representatives requested that the hearing be brought forward in order for a friendly settlement of the case to be effected. On 1 June 1985 this request was acceded to and the hearing was brought forward to 1 July 1985. On that date the applicant agreed to relinquish any claim against [S.I.A.E.] in exchange for the sum of 20,908,784 lire and for reimbursement of the procedural costs and lawyers' fees."

#### PROCEEDINGS BEFORE THE COMMISSION

10. In his application of 20 September 1985 to the Commission (no. 11890/85), Mr Caleffi complained of the length of the civil proceedings he had brought. 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-B 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 Caleffi complained that his civil action 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 on 21 November 1977 when S.I.A.E. was summoned to appear before the magistrate's court. It ended on 1 July 1985 when a friendly settlement was reached.

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. According to the Government, the period in question considered as a whole was not unreasonable, as the dispute was heard by four courts. The period of over three years which it took the Court of Cassation to hold a hearing could be explained by that Court's excessive workload and the duty in general to examine cases in the order in which they were received. As for the eight months that the court to which the case was then referred took to fix a hearing date, this period too resulted from the number of cases on the list and the time the registry had to wait before receiving the documents in the case.

The applicant conceded that responsibility for the periods between 27 September and 19 December 1980 and between 17 April 1984 and 11 April 1985 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.

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 was particularly so during the cassation proceedings, when over three years elapsed before the hearing (19 December 1980 - 6 February 1984).

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 10,000,000 Italian lire as compensation for non-pecuniary damage.

According to the Government, a finding that there had been a violation would in itself constitute adequate just satisfaction.

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

The Court considers that the applicant undoubtedly suffered non-pecuniary damage. Making an assessment on an equitable basis, it awards him the amount claimed.

### B. Costs and expenses

20. Mr Caleffi 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 sought.

### 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 January 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 Mr Caleffi 10,000,000 (ten million) Italian lire in respect of non-pecuniary 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