

In the case of Cifola 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 F. Matscher,
Mr B. Walsh,
Mr C. Russo,
Mr A. Spielmann,
Mr N. Valticos,
Mr A.N. Loizou,
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 30 October 1991 and 24 January 1992,

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

Notes by the Registrar

* The case is numbered 40/1991/292/363. 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.

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. 13216/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Attilio Cifola, on 11 September 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. 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 the lawyer who would represent him (Rule 30).

3. On 23 April 1991 the President of the Court decided that, pursuant to Rule 21 para. 6 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., Owners' Services Ltd, Cardarelli, Golino, Taiuti, Maciariello, Manifattura FL, Steffano, Ruotolo, Vorrasi, Cappello, G. v. Italy, Caffè Roversi S.p.a., Andreucci, Gana, Barbagallo, Pandolfelli and Palumbo, Arena, Pierazzini, Tusa, Cooperativa Parco Cuma, Serrentino, Cormio, Lorenzi, Bernardini and Gritti and Tumminelli* should be heard by the same Chamber.

* Cases nos. 3/1991/255/326 to 13/1991/265/336; 15/1991/267/338; 16/1991/268/339; 18/1991/270/341; 20/1991/272/343; 22/1991/274/345; 24/1991/276/347; 25/1991/277/348; 33/1991/285/356; 36/1991/288/359; 38/1991/290/361; 41/1991/293/364 to 44/1991/296/367; 50/1991/302/373; 51/1991/303/374; 58/1991/310/381; 59/1991/311/382; 61/1991/313/384

4. 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 F. Matscher, Mr J. Pinheiro Farinha, Sir Vincent Evans, Mr A. Spielmann, Mr I. Foighel, Mr J.M. Morenilla and Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Subsequently, Mr B. Walsh, Mr A.N. Loizou and Mr N. Valticos, substitute judges, replaced respectively Mr Pinheiro Farinha and Sir Vincent Evans, who had both resigned and whose successors had taken up their duties before the deliberations held on 30 October, and Mr Foighel, who was unable to take part in the further consideration of the case (Rules 2 para. 3, 22 para. 1 and 24 para. 1).

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"), the Delegate of the Commission and the applicant's lawyer on the organisation of the proceedings (Rules 37 para. 1 and 38). In accordance with the order made in consequence, the Registrar received on 16 July 1991 the Government's memorial and the claims for just satisfaction (Article 50 of the Convention) (art. 50) submitted by the applicant, whom the President had authorised to use the Italian language (Rule 27 para. 3). By a letter received on 22 August, the Secretary to the Commission informed the Registrar that the Delegate did not consider it necessary to reply thereto.

6. On 28 June 1991 the Chamber had decided to dispense with a hearing, having found that the conditions for such derogation from the usual procedure were satisfied (Rules 26 and 38).

7. On 28 August the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

8. On 5 and 26 November, respectively, the Commission and the Government filed their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50).

AS TO THE FACTS

9. Mr Attilio Cifola is an Italian national and resides in Rome. He is a builder. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-21 of its report):

"16. On 5 March 1984 the applicant took proceedings before the Rome District Court against the group of co-owners of a building (condominio) located in Rome to determine his proprietary rights over a part of the building and his claim for damages.

17. The investigation began at the hearing on 29 May 1984. The investigating judge found that the file contained no evidence of a summons against Mrs P. and directed the applicant to provide such evidence or to have the summons reissued. The transfer of the investigating judge caused the automatic adjournment of the next hearing, fixed for 6 December 1984. At the hearing of 26 March 1985, the applicant produced documentary evidence that he had taken out a new summons against Mrs P. The investigating judge found that the summons was out of time and adjourned the hearing to 16 July 1985. On that date, the applicant requested an adjournment in order to take out a further summons against Mrs P.

18. At the hearing of 7 January 1986, the investigating judge found the content of the new summons to be insufficient and again adjourned the proceedings in the case. At the hearing of 14 April 1986, the applicant established that the first summons (that of 5 March 1984) had been served in due form.

19. At the hearing of 8 July 1986, the parties made their final submissions and the investigating judge fixed the date of the hearing before the appropriate chamber of the court for 10 February 1988, on which date judgment was reserved.

20. By decision of 1 March 1988 the District Court confirmed the applicant's right of property over the disputed part of the building which it also found to be subject to a right of passage for the other co-owners. The text of the decision was lodged with the registry on 25 March 1988.

21. It does not appear that an appeal was filed against that decision."

PROCEEDINGS BEFORE THE COMMISSION

10. Mr Cifola lodged his application with the Commission on 11 September 1987. He complained of the length of the civil proceedings brought by him and relied on Article 6 para. 1 (art. 6-1) of the Convention.

11. On 11 May 1990 the Commission declared the application (no. 13216/87) 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 231-A 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

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

12. The applicant claimed 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, whereas the Commission accepted it.

13. The period to be taken into consideration began on 5 March 1984 when the proceedings were instituted against the defendants in the Rome District Court. According to the information supplied to the Commission, it ended, at the latest, on 25 March 1989, on which date the District Court's judgment became final, no appeal having been filed (see the *Pugliese (II) v. Italy* judgment of 24 May 1991, Series A no. 206-A, p. 8, para. 16).

14. The reasonableness of the length of proceedings is to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment.

15. The Government invoked the conduct of the applicant, who in particular had not sought to have his case dealt with more rapidly.

16. The Court observes that the investigation took a little more than twenty-five months (29 May 1984 - 8 July 1986); the trial hearing took place one year and seven months later, on 10 February 1988.

Initially, there was a misunderstanding between the investigating judge and the applicant's lawyer on the question of the validity of the originating summons; it is hard to understand why it should have taken nearly two years to resolve this matter (29 May 1984 - 14 April 1986). In addition, there were ten months between the first hearing and the second (29 May 1984 - 26 March 1985). There was then a second period of stagnation in the proceedings, of nineteen months, between the end of the investigation and the trial hearing (8 July 1986 - 10 February 1988). On the other hand, the respondent State cannot be held responsible for the year which went by before the judgment, which was filed with the registry on 25 March 1988, became final.

17. Taking the proceedings as a whole, however, the Court cannot regard as "reasonable" the lapse of time in the present case.

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."

19. The applicant claimed a sum for damage and the reimbursement of his costs and expenses, without putting forward any figures.

The Commission took the view that he was entitled to

reparation not only for non-pecuniary damage, but also for any pecuniary damage sustained by him if he succeeded in establishing its existence and that of a causal connection with the violation found.

20. The evidence does not show that these conditions have been satisfied. The applicant may, however, have suffered non-pecuniary damage, but in the circumstances of the case the Court considers, like the Government, that the finding of a violation of Article 6 para. 1 (art. 6-1) provides him in itself with sufficient just satisfaction for the purposes of Article 50 (art. 50).

In view of the fact that Mr Cifola did not indicate any sum, the claim concerning his costs and expenses must also be dismissed.

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 this judgment constitutes in itself, as regards the non-pecuniary damage alleged, sufficient just satisfaction for the purposes of Article 50 (art. 50);
3. Dismisses the remainder of the applicant's claim.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 27 February 1992.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar