

In the case of *Cormio 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 58/1991/310/381. 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 19 April 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. 13130/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Armando Cormio, on 17 July 1987. Mr Cormio was designated by the letter "C." in the proceedings before the Commission; subsequently he agreed to the disclosure of his identity.

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 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, Cifola, Pandolfelli and Palumbo, Arena, Pierazzini, Tusa, Cooperativa Parco Cuma, Serrentino, 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; 40/1991/292/363 to 44/1991/296/367; 50/1991/302/373; 51/1991/303/374; 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") and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). In accordance with the order made in consequence, the Registrar received the Government's memorial on 16 July 1991. 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 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 10 October and 5 November, respectively, the Government and the Commission filed their observations on the claims for just satisfaction which the applicant had communicated to the Registrar on 1 July (Article 50 of the Convention; Rules 50 and 1 (k), taken together) (art. 50).

AS TO THE FACTS

9. Mr Armando Cormio is an Italian national and resides in Australia. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 17-23 of its report):

"17. On 25 May 1983 the applicant and a Mr B. made an

agreement for the sale of a building, whereby the parties undertook to conclude the final contract by 15 June 1983. Mr B. obtained possession of the building.

18. The applicant then emigrated to Australia, conferring a general power of attorney on V., his brother.

19. On 6 January 1984, Mr B. having refused either to conclude the sale contract or to restore the property to its owner, V. instituted proceedings against him before the Rome District Court, seeking the termination of the agreement and the restitution of the property.

20. The investigation opened at the hearing of 21 February 1984, followed by hearings on 26 June 1984 and 13 December 1984. On the latter date, two witnesses were examined and the investigating judge called for an expert opinion.

21. The expert appointed was sworn in at the hearing of 6 June 1985 and was given one hundred days to lodge the opinion. However, the opinion had not yet been filed by the hearing of 21 November 1985 and the investigating judge decided to appoint a new expert who was sworn in at the hearing of 19 December 1985.

22. Two further hearings were held on 7 May and 2 October 1986 after which, at the hearing of 28 May 1987, the investigation was concluded and the investigating judge fixed the hearing before the competent court chamber for 17 February 1989.

23. Following a settlement of the dispute out of court, with the result that a sale contract was made on 27 July 1989, the parties did not appear at the hearing of 17 February 1989 or at the following hearing, fixed for 27 October 1989. On that date, the parties' failure to appear caused the case to be struck off the list in accordance with Article 309 of the Code of Civil Procedure."

PROCEEDINGS BEFORE THE COMMISSION

10. Mr Cormio lodged his application with the Commission on 17 July 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. 13130/87) admissible. In its report of 5 March 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 228-I 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

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 6 January 1984 when the proceedings against Mr B. were instituted in the Rome District Court. It ended on 27 October 1989, when the District Court struck the case out of its list.

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 practical difficulties of the investigation inasmuch as it had been necessary to replace an expert who had failed to complete his task. In addition, the applicant had never requested that his case be dealt with more rapidly.

The Commission took the view that "neither the complex features of the case nor the conduct of the applicant [justified] in themselves the length of the proceedings". It drew attention to a period of inactivity between 28 May 1987 (last hearing before the investigating judge) and 17 February 1989 (hearing before the competent chamber of the District Court).

16. The Court notes that the investigation took almost three years and five months, after which approximately twenty-one months elapsed before the trial hearing.

As regards the first of these periods, it may be observed that the very purpose of the expert opinion somewhat complicated the investigation. In addition, the investigating judge displayed diligence in replacing the expert as soon as he had established that the expert had not submitted his report by the prescribed date (see, a contrario, the *Capuano v. Italy* judgment of 25 June 1987, Series A no. 119, p. 13, paras. 30-31).

The second period appears on the face of it excessive, but two circumstances must be taken into account: first, the parties to the dispute failed to appear before the trial court, which accordingly struck the case out of the list pursuant to Article 309 of the Code of Civil Procedure; and secondly, they concluded an out-of-court settlement which removed any dispute between them.

17. In the light of all the circumstances of the case and in particular the fact that the dispute was settled out of court, the delays which occurred in the proceedings were not so substantial as to violate Article 6 para. 1 (art. 6-1).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 para. 1 (art. 6-1).

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

