

In the case of *Diana 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:

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#### Notes by the Registrar

\* The case is numbered 3/1991/255/326. 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.

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#### 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. 11898/85) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Giovanni Diana, on 3 October 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 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 *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, Cormio, Lorenzi, Bernardini and Gritti and Tumminelli\* should be heard by the same Chamber.

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\* Cases nos. 4/1991/256/327 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; 58/1991/310/381; 59/1991/311/382; 61/1991/313/384

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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 the memorial of the applicant - whom the President had authorised to use the Italian language (Rule 27 para. 3) - and 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 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 14 October and 5 November, respectively, the Government and the Commission filed their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50).

#### AS TO THE FACTS

9. Mr Giovanni Diana is an Italian national and resides at Rocchetta Di Cairo (Savona). The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-25 of its report):

"16. By summons served on 12 and 14 April 1978, the applicant brought an action against Mr Z. and Mrs V. before the Savona District Court to establish that he had lawfully altered the conditions governing the use of a right of way to which his property was subject.

17. On 5 June 1981 the action was joined with two other actions introduced in late November/early December 1979 and March 1981 to determine respectively the extent of the right of way in question and the abuses committed by Mr Z. and Mrs V. in using their right of way.

18. In the interval, seven hearings had been held on 26 May 1978, 6 October 1978, 19 January 1979, 19 April 1980, 30 May 1980, 31 October 1980 and 12 December 1980.

19. On 3 July 1981 the investigating judge ordered the parties to appear in person by summoning them to the hearing of 17 November 1981, on which date he ordered an inspection of the premises. This was carried out on 30 April 1982.

20. On 12 November 1982 the investigating judge summoned the parties to appear at the hearing of 21 December 1982, when he ordered a further inspection with a view to securing a friendly settlement of the case.

21. The hearing was initially set down for 26 March 1983, but was postponed to 16 April 1983 at the parties' request made on 25 March 1983. On the appointed day the investigating judge, considering that a friendly settlement of the case could not be reached, cancelled the inspection in compliance with the applicant's request.

22. Two further hearings took place on 3 and 17 June 1983, after which the investigating judge was transferred. The next hearing before the new judge was not held until 23 November 1984.

23. After the hearings of 1 and 29 March 1985, the investigating judge invited the parties to make their final submissions at the hearing of 12 July 1985, on which date he referred the case to the appropriate chamber of the District Court.

24. The hearing before the court chamber took place on 8 May 1987. The judgment, which found for the applicant, was adopted on 28 May and filed with the registry on 12 August 1987.

25. On 23 October 1987 Mr Z. and Mrs V. appealed against the decision of the Savona District Court. At the hearing of 28 April 1988 the parties made their final submissions and the case was referred to the appropriate chamber of the Genoa Court of Appeal, before which a hearing apparently took place on 17 March 1989. On 5 October 1989 the appeal was dismissed. The text of the decision was lodged with the registry on 30 October 1989.

26. ... "

10. According to the information supplied to the European Court by the applicant, the Court of Appeal's judgment became final on 29 January 1990.

#### PROCEEDINGS BEFORE THE COMMISSION

11. Mr Diana lodged his application with the Commission on 3 October 1985. 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.

12. On 11 May 1990 the Commission declared the application (no. 11898/85) 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\*.

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\* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 229-A 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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## AS TO THE LAW

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

13. 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.

14. The period to be taken into consideration began on 12 April 1978 when the proceedings against Mr Z. were instituted in the Savona District Court. It ended, at the latest, on 29 January 1990 when the Court of Appeal's judgment became final.

15. 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.

16. The Government invoked the complexity of the facts and the legal issues, as well as the excessive workload of the relevant courts. In addition, the applicant had not requested that his case be examined more rapidly.

Mr Diana maintained that such a step would have been ineffective and complained of the lack of staff at the Savona District Court.

17. The case was indeed one of some complexity, which was increased on 5 June 1981 following its joinder with two other cases. The investigation lasted more than seven years, during which the investigating judge held numerous hearings. Several of them concerned the attempt to secure an out-of-court settlement and the parties caused the adjournment of those of 25 March and 16 April 1983, for which circumstances the State cannot be held responsible. At that point the investigating judge was transferred and the proceedings remained dormant until he was replaced, approximately seventeen months later (17 June 1983 - 23 November 1984).

Furthermore there was a long period of stagnation of nearly twenty-one months before the competent chamber of the District Court (12 July 1985 - 8 May 1987).

The Government pleaded the backlog of cases in the relevant courts, but Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organise their legal systems in such a way that their

courts can meet each of its requirements (see, inter alia, the Vocaturo v. Italy judgment of 24 May 1991, Series A no. 206-C, p. 32, para. 17).

It is true that the proceedings were thereafter conducted at an acceptable pace; thus the District Court's judgment was filed with the registry two and a half months after its delivery, and the Court of Appeal's judgment twenty-five days after it had been given.

18. 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)

19. 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

20. Mr Diana claimed in the first place 100,000,000 Italian lire in respect of pecuniary damage and compensation for non-pecuniary damage, for which he did not give any figure.

In the Government's contention, he did not sustain any pecuniary damage; as to non-pecuniary damage, a finding of a violation would in itself provide sufficient just satisfaction for the purposes of Article 50 (art. 50).

21. There is no evidence that the violation found caused the applicant pecuniary damage. On the other hand, he must have suffered a degree of non-pecuniary damage for which the Court, making an assessment on an equitable basis, awards him 2,000,000 lire.

### B. Costs and expenses

22. Mr Diana also sought 10,000,000 Italian lire in respect of costs incurred before the Convention organs.

Having regard to the evidence at its disposal and its case-law in this field, the Court awards 2,000,000 lire under this head.

### C. Interest

23. The Commission invited the Court to fix for the Government - who did not give their opinion - a compulsory time-limit for executing the present judgment and to make provision for the payment of interest in the event of their failure to comply therewith.

24. The first of these proposals is in conformity with a practice followed by the Court since October 1991.

As to the second, the Court does not consider it appropriate to require any payment of interest in this instance, particularly as no such request was made by the applicant.

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 the applicant, within three months, 2,000,000 (two million) Italian lire for non-pecuniary damage and 2,000,000 (two 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 27 February 1992.

Signed: Rolv RYSSDAL  
President

Signed: Marc-André EISSEN  
Registrar