

In the case of Golino 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 11/1991/263/334. 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. 12172/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Luigi Golino, on 16 April 1986.

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, Taiuti, Maciariello, Manifattura FL, Stefano, 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.

* Cases nos. 3/1991/255/326 to 10/1991/262/333; 12/1991/264/335; 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

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 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 1991, respectively, the Commission and the Government lodged their observations on the claims for just satisfaction which the applicant had communicated to the Registrar on 31 July (Article 50 of the Convention; Rules 50 and 1(k), taken together) (art. 50).

AS TO THE FACTS

9. Mr Luigi Golino is an Italian national and resides at Marcanise (Caserta). The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-23 of its report):

"16. On 24 August 1980 the applicant was involved in a traffic accident (a collision between the motorcycle which he was riding and

one ridden by a Mrs F.) which caused him serious injury.

17. Criminal proceedings against Mrs F., in the course of which a medical opinion was also submitted, ended in the case being discharged under an amnesty law.

18. By summons served on 4 September 1982, the applicant claimed damages in respect of the accident against Mrs F. and Mr M. before the Santa Maria Capua Vetere District Court.

19. The investigation of the case, commenced at the hearing of 14 December 1982, continued at the hearings of 5 April 1983, 8 July 1983 (adjourned at the defendants' request), 8 November 1983, 23 December 1983, 10 April 1984, 25 September 1984 and 25 January 1985.

20. On 28 May 1985 the investigating judge invited the parties to make their final submissions at the hearing of 19 November 1985. However, on that date the investigating judge had other commitments and the hearing was thus adjourned to 1 April 1986. On that date, allowing a request by the defendants, the investigating judge called for the taking of an expert opinion in order to establish the seriousness of the injuries suffered by the applicant and summoned the expert to the hearing of 26 September 1986.

21. Because the investigating judge was unable to attend, this was postponed by court order to 6 February 1987, when the expert was sworn in. He examined the applicant on 26 February 1987 and lodged the opinion on 12 May 1987. At the end of the hearing on 5 June 1987, the case was ready to be tried.

22. On 27 November 1987 the parties made their final submissions and the investigating judge referred the case to the competent court chamber. The hearing before it took place on 21 February 1989, when judgment was reserved.

23. On 14 March 1989 the District Court ordered the defendants to pay damages. The text of the decision was lodged with the registry on 27 May 1989."

10. According to the information supplied by the Government to the European Court, no appeal was filed.

PROCEEDINGS BEFORE THE COMMISSION

11. Mr Golino lodged his application with the Commission on 16 April 1986. 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. 12172/86) 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 229-H 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)

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 4 September 1982 when the proceedings were instituted against Mrs F. and Mr M. in the Santa Maria Capua Vetere District Court. It ended, at the latest, on 27 May 1990 when the District Court's judgment became final (see the Pugliese (II) v. Italy judgment of 24 May 1991, Series A no. 206-A, p. 8, para. 16).

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, the conduct of the applicant - who in particular had not requested that his case be dealt with more rapidly - and the excessive workload of the District Court.

17. The Court notes in the first place that the investigation took just under six years (14 December 1982 - 27 November 1987). It is true that the investigating judge had to question four witnesses and have recourse to an expert opinion; in addition, the applicant caused an adjournment (not referred to in the Commission's report) and the defendants obtained two adjournments. The Court observes nevertheless, like the Commission, that there were two periods of stagnation: from 28 May 1985 to 1 April 1986 and from that date to 6 February 1987. Moreover, the judge waited until the hearing of 25 September 1984 to hear witnesses which Mr Golino had cited at the very beginning and until 1 April 1986 to order an expert opinion, a measure requested by the defendants but which he could have ordered earlier of his own motion.

The trial hearing did not take place until 21 February 1989, one year and three months after the end of the investigation, which delay made the situation worse. The Government pleaded the backlog of cases pending in the Santa Maria Capua Vetere District Court, 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).

18. Accordingly and notwithstanding the fact that the State cannot be held responsible for the year which elapsed until the decision, the text of which was lodged with the registry on 27 May 1989, became final, 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. The applicant claimed in the first place compensation for pecuniary and non-pecuniary damage, without giving any figures. He did not seek the reimbursement of costs and expenses.

The Commission took the view that, in addition to reparation for non-pecuniary damage, Mr Golino was entitled to compensation for any pecuniary damage sustained by him if he succeeded in establishing its existence and that of a causal connection with the violation found.

21. The evidence does not show that these conditions have been satisfied. On the other hand, the applicant undoubtedly suffered non-pecuniary damage for which the Court, making an assessment on an equitable basis, awards him 2,000,000 Italian lire.

B. Interest

22. 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.

23. 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 Mr Golino, within three months, 2,000,000 (two million) Italian lire for non-pecuniary damage;
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