

In the case of Pandolfelli and Palumbo 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 41/1991/293/364. 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. 13218/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by two Italian nationals, Mr Gennaro Pandolfelli and Mrs Domenica Palumbo, on 20 August 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, Mrs Palumbo and her two sons informed the Registrar on 24 April 1991 of Mr Pandolfelli's death; they stated that they wanted the proceedings to continue and to take part in them and be represented by the lawyer whom they had designated (Rule 30). For reasons of convenience Mr Pandolfelli and Mrs Palumbo will continue to be referred to as "the applicants" in this judgment, although it is now Mrs Palumbo and her two sons who

are to be regarded as having that status (see, inter alia, the *Vocaturò v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 29, para. 2).

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, 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; 40/1991/292/363; 42/1991/294/365 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 applicants' 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 applicants - whom the President had authorised to use the Italian language (Rule 27 para. 3) - on 12 July 1991 and the Government's memorial on 16 July. 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 10 October and 5 November, respectively, the Government and the Commission filed their observations on the applicants' claims for just satisfaction (Article 50 of the Convention) (art. 50).

AS TO THE FACTS

9. Mr Gennaro Pandolfelli and Mrs Domenica Palumbo, both of Italian nationality, resided in Rome at the time of the former's death. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-27 of its report):

"16. On 13 September 1972 the applicants took proceedings before the Terracina magistrate's court (pretore) against Mrs M. in order to establish that they had right of way through her land.

17. The investigation opened at the hearing of 13 October 1972. At the hearing of 2 February 1973, the magistrate's court ordered an expert's report. The expert appointed was sworn in at the hearing of 24 February 1973 and given fifty days to lodge the report. However, since the time-limit was not observed, the hearing of 27 April 1973 was postponed to 8 June 1973.

18. The investigation proceeded during hearings on 26 October 1973 (when the applicants asked that the expert be summoned in order to obtain clarifications), 22 February 1974, 26 April 1974 (when Mrs M. requested an inspection of the site), 17 May 1974, 25 October 1974, 14 February 1975, 21 February 1975 and 5 December 1975, when judgment was reserved.

19. However, by order of 6 March 1976 the magistrate's court decided to reopen the investigation and obtain further clarifications from the expert.

20. On 2 April 1976 the expert appeared in court and was given thirty days to lodge a further report. Additional hearings took place on 1 October 1976, 4 February 1977 (adjourned at the parties' request), 27 May 1977 (adjourned at Mrs M.'s request), 21 October 1977, 27 January 1978 (adjourned by court order) and 28 April 1978.

21. Judgment was again reserved at the hearing of 9 February 1979. On 14 February 1979 the magistrate's court found that it lacked jurisdiction to settle the dispute and recognised the jurisdiction of the Latina District Court.

22. On 23 March 1979 the applicants applied to the Court of Cassation for a decision on the question of jurisdiction (istanza di regolamento di competenza), which decision was given on 28 December 1979 and found that the Terracina magistrate's court did have jurisdiction. The text of the decision was lodged with the registry on 28 March 1980.

23. At the hearing of 31 October 1980 the magistrate's court invited the parties to make their final submissions, and they did so at the hearing on 27 February 1981. At the close of the hearing on 27 November 1981, the magistrate's court allowed the applicants' claim. The text of the decision was lodged with the registry on 18 December 1981. On 3 December 1982 Mrs M. appealed to the Latina District Court.

24. The first hearing before the investigating judge took place on 8 February 1983. The next hearing, fixed for 28 June 1983, was postponed by court order to 20 October 1983. One more hearing took place on 10 January 1984, after which the parties made their final submissions at the hearing of 26 June 1984.

25. The hearing before the competent court chamber, fixed for 9 December 1986, was postponed by court order to 22 March 1988, owing to the transfer of the reporting judge.

26. In compliance with a request by the applicants, filed on 16 December 1986, the aforementioned hearing was brought forward to 24 November 1987 but was subsequently postponed to 22 December 1987.

27. On 22 December 1987 judgment was reserved and on 12 January 1988 the magistrate's court's decision was overruled and the applicants' claim was dismissed. The text of the judgment was lodged with the registry on 26 February 1988.

28."

10. According to the information supplied to the European Court, the applicants appealed, on 20 December 1988, to the Court of Cassation, which gave judgment on 31 May 1991; its decision had not yet been filed with the registry.

PROCEEDINGS BEFORE THE COMMISSION

11. Mr Pandolfelli and Mrs Palumbo lodged their application with the Commission on 20 August 1987. They complained of the length of the civil proceedings brought by them and relied on Article 6 para. 1 (art. 6-1) of the Convention.

12. On 11 May 1990 the Commission declared the application (no. 13218/87) 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-B 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 applicants complained that their 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 did not begin when the proceedings were instituted against Mrs M. in the Terracina magistrate's court, on 13 September 1972, but only on 1 August 1973, when the Italian declaration accepting the right of individual petition (Article 25) (art. 25) took effect. In order to determine the reasonableness of the length of time which elapsed after that date, regard must be had, however, to the state of the case at that time (see, inter alia, the *Vocaturo v. Italy* judgment of

24 May 1991, Series A no. 206-C, p. 32, para. 14).

This period ended, at the earliest, on 31 May 1991, as the text of the judgment has not yet been filed with the registry.

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 exceptional circumstances, such as the reopening of the investigation and the transfer of the investigating judge.

17. The Court is not persuaded by this argument.

Although the decision to reopen the investigation at first instance undoubtedly complicated the course of the proceedings, it was taken by the judge who had studied the file and who had at his disposal all the evidence adduced up to that point. Clearly it was not a very simple case because an expert opinion had already been sought and it proved necessary to seek clarifications from the expert. Nevertheless, the investigation was conducted under the supervision of the magistrate's court, which remained responsible for the preparation and the speedy conduct of the trial (see the *Capuano v. Italy* judgment of 25 June 1987, Series A no. 119, p. 13, para. 30). Furthermore, it concluded that it lacked jurisdiction nearly six and a half years after the case had been brought before it (13 September 1972 - 14 February 1979). The Court of Cassation only required until 28 December 1979 to overrule it on this question, but it is hard to understand why it should have taken three months for the text of that decision to be filed with the registry.

There was also, on appeal, between the conclusion of the investigation and the trial hearing, a long interval (26 June 1984 - 22 December 1987) due to, among other things, the transfer of the investigating judge. However, 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* judgment, cited above, Series A no. 206-C, p. 32, para. 17).

In its turn the Court of Cassation did not give judgment for more than two years and five months (20 December 1988 - 31 May 1991); moreover, eight months have gone by since then and the text of this judgment has still not been filed with the registry.

On the other hand, after the question of jurisdiction had been determined, the investigation would seem to have progressed at a normal pace at first instance (28 March 1980 - 27 November 1981), and subsequently on appeal (8 February 1983 - 26 June 1984). Furthermore, the parties brought about a number of adjournments, Mrs M. waited almost a year before filing an appeal (18 December 1981 - 3 December 1982) and the applicants did not appeal to the Court of Cassation for about ten and a half months (26 February - 20 December 1988); the State cannot be held responsible for the resulting delays.

18. Nevertheless, taking the proceedings as a whole, the Court cannot regard as "reasonable" in this instance a lapse of time of more than eighteen years.

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 applicants claimed in the first place 300,000,000 Italian lire for pecuniary and non-pecuniary damage.

The Commission took the view that, in addition to reparation for non-pecuniary damage, they were entitled to compensation for any pecuniary damage sustained by them if they 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 applicants undoubtedly suffered non-pecuniary damage, for which the Court, making an assessment on an equitable basis, awards them 5,000,000 lire.

B. Costs and expenses

22. The applicants also sought 3,850,000 lire in respect of costs incurred before the Convention organs.

Having regard to the evidence at its disposal and to its case-law in this field, the Court awards them the sum claimed in its entirety.

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 applicants.

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 applicants, within three months, 5,000,000 (five million) Italian lire for non-pecuniary damage and 3,850,000 (three million eight hundred and fifty thousand) 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