

In the case of Ruotolo 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 18/1991/270/341. 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. 12460/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Luigi Ruotolo, on 15 September 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, Golino, Taiuti, Maciariello, Manifattura FL, Steffano, 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 13/1991/265/336; 15/1991/267/338; 16/1991/268/339; 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 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 November the Commission lodged its observations on the claims for just satisfaction which the applicant had communicated to the Registrar on 3 April and 11 June (Article 50 of the Convention; Rules 50 and 1(k), taken together) (art. 50) and on which the Government had already commented in their memorial.

AS TO THE FACTS

9. Mr Luigi Ruotolo is an Italian national and resides at Montesilvano (Pescara). 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. In April 1979 the applicant was dismissed by the X company.

17. On 18 October 1979 he applied to the Rome magistrate's court (pretore) for reinstatement and damages.

18. The investigation of the case proceeded at the following hearings: 8 January 1980 (adjourned at the request of the parties), 22 January 1980, 29 April 1980 (adjourned owing to the absence of the witnesses summoned to appear), 13 May 1980, 9 July 1980 (adjourned for the same reasons), 14 October 1980, 24 November 1980 (adjourned at the defendant's request), 9 December 1980 (adjourned owing to the absence of the witnesses summoned to appear), 23 February 1981 and 28 April 1981.

19. At the close of the last-mentioned hearing, the magistrate's court gave a decision dismissing the applicant's claim. The text was lodged with the registry on 29 April 1981.

20. On 19 November 1981 the applicant appealed against the above decision. The hearing before the Rome District Court on 2 July 1982 ended in the dismissal of the applicant's appeal. The text of the decision (thirteen typed pages) was lodged with the registry on 24 February 1983.

21. On 23 February 1984 the applicant appealed to the Court of Cassation, which on 24 October 1985, after hearing the case, allowed the application, set aside the lower court's decision and referred the case to the Frosinone District Court. The decision by the Court of Cassation (twelve typed pages) was lodged with the registry on 27 March 1986.

22. On 17 January 1987 the applicant resumed his action before the Frosinone District Court. The investigation, commenced at the hearing on 1 April 1987, continued at the hearings of 22 October 1987 and 21 January 1988 (adjourned at the parties' request), 12 October 1988 (adjourned because the investigating judge was not present), 17 November 1988 (adjourned at the parties' request) and 19 January 1989.

23. At the close of the final hearing the court delivered judgment, reversing the decision by the Rome magistrate's court and allowing the applicant's petition for reinstatement. It also awarded him the sum of 10,443,900 lire, adjusted and with interest.

24. The text of the decision (fourteen typed pages) was lodged with the registry on 18 July 1989.

25. On 21 December 1989 the X company appealed against this decision to the Court of Cassation. On 30 January 1990 the applicant filed a reply to the appeal and also an appeal objecting to the amount of the damages awarded to him."

10. According to the information since supplied by the Government, the Court of Cassation gave judgment on 31 May 1991, but on 24 January 1992 the text of its judgment had still not been filed with the registry.

PROCEEDINGS BEFORE THE COMMISSION

11. Mr Ruotolo lodged his application with the Commission on 15 September 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. 12460/86) 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 230-D 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 18 October 1979 when the proceedings were instituted in the Rome magistrate's court. It ended, at the earliest, on 31 May 1991, the date of the second judgment of the Court of Cassation.

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 excessive workload of the relevant courts. In addition, the applicant had not requested that his case be dealt with more rapidly.

17. The Court stresses that special diligence is necessary in employment disputes (see the *Vocatur v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 32, para. 17). Italy moreover acknowledged this by amending, in 1973, the special procedure laid down in this field and by introducing, in 1990, emergency measures intended to speed up the conduct of such proceedings (see, as the most recent authority, the *Lestini v. Italy* judgment of 26 February 1992, Series A no. 228-E, p. 54, para. 18).

The case was one of some complexity and the parties caused five adjournments of hearings. It should also be noted that the applicant did not resume his action until more than nine months after the first judgment of the Court of Cassation (27 March 1986 - 17 January 1987). In addition and above all, the examination of the case gave rise to two consecutive sets of proceedings, the first of which lasted from 18 October 1979 to 27 March 1986, and the second, after the Court of Cassation had remitted the case to a different court, until at least 31 May 1991.

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, cited above, Series A no. 206-C, p. 32, para. 17).

Viewed separately, several of the delays observed may appear normal; however, having regard to the sum of such periods and several delays for which the competent courts were responsible - in particular as regards the filing of the decision of 2 July 1982 (more than seven and a half months) and of the judgment of 24 October 1985 (more than five months) -, the Court considers an overall lapse of time of more than twelve years excessive.

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."

A. Damage

19. Mr Ruotolo claimed in the first place 335,000,000 Italian lire or, in the alternative, 19,000,000 lire for pecuniary damage; he left the matter of non-pecuniary damage to be assessed by the Court.

The Government denied that there had been any pecuniary damage, because the applicant's claims were unfounded. In particular, his primary claim was based, *inter alia*, on a consideration - the inadequate statement of reasons given in the Rome District Court's judgment (see paragraph 9 above, no. 23) - which could not be taken into account under Article 6 para. 1 (art. 6-1) of the Convention.

As regards the non-pecuniary damage, a finding of a violation would provide in itself sufficient just satisfaction in the Government's view.

20. There is no evidence that the applicant sustained pecuniary damage resulting from the failure to comply with the requirement of reasonable time. 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 5,000,000 lire.

B. Costs and expenses

21. The applicant also claimed 7,502,000 lire in respect of costs incurred in the national courts.

The Court cannot perceive a causal connection between the violation found and the costs incurred in the domestic legal system. There are therefore no grounds for awarding Mr Ruotolo the reimbursement claimed.

C. 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

1. Holds by eight votes to one that there has been a violation of Article 6 para. 1 (art. 6-1);
2. Holds unanimously that the respondent State is to pay to Mr Ruotolo, within three months, 5,000,000 (five million) Italian lire for non-pecuniary damage;
3. Dismisses unanimously 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

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the dissenting opinion of Mr Bigi is annexed to the present judgment.

Initialled: R. R.

Initialled: M.-A. E.

DISSENTING OPINION OF JUDGE BIGI

(Translation)

I am unable to agree with the majority in this case because I do not consider that the sum of the delays for which the State can be held responsible amounts to an unreasonable time in this instance.