

In the case of Serrentino 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 29 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 51/1991/303/374. 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. 12295/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Ignazio Serrentino, on 22 July 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 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 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, 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 to 44/1991/296/367; 50/1991/302/373; 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 23 April 1991, 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 hearing, 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). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 21 June 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 would submit oral observations.

6. On 28 August the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

7. In accordance with the decision of the President - who had given the applicant leave to use the Italian language (Rule 27 para. 3) -, the hearing took place in public in the Human Rights Building, Strasbourg, on 29 October 1991. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr G. Raimondi, magistrato, seconded to the Diplomatic Legal Service of the Ministry of Foreign Affairs,	Co-Agent,
Mr G. Manzo, magistrato, seconded to the Ministry of Justice,	
Mrs A. Passannanti, magistrato, seconded to the Ministry of Justice,	Counsel;

(b) for the Commission

Mr J.A. Frowein,

Delegate;

(c) for the applicant

Mr M. Miccoli, avvocato,

Counsel.

The Court heard addresses by Mr Raimondi and Mrs Passannanti for the Government, by Mr Frowein for the Commission and by Mr Miccoli for the applicant, as well as their answers to its question.

8. On 10 October the Government had lodged their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50); on 5 November the Commission filed its observations on those claims.

AS TO THE FACTS

9. Mr Ignazio Serrentino is an Italian national and resides at Reggio Calabria. He is unemployed. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 17-26 of its report):

"17. On 10 October 1983 the applicant was involved in a road accident and seriously injured.

18. By summons served on 11 September 1984, the applicant took proceedings for damages before the Reggio Calabria District Court against the owner and the driver of the car which had knocked him down, and also against the X insurance company.

19. The investigation opened at the hearing of 17 December 1984, followed by the hearing of 18 February 1985. On that date the parties requested certain investigative steps, on which the investigating judge ruled by order of 7 March 1985. The next hearing, fixed for 3 June 1985, did not take place until 18 November 1985 when the investigating judge instructed an expert to assess within sixty days the damage sustained by the applicant.

20. The medical opinion was lodged with the registry on 20 January 1986. Its findings were that the accident had caused the applicant 507 days' total incapacity for work and 295 days' partial incapacity, as well as permanently impairing his fitness for work by 25%.

21. The hearings of 17 March and 12 May 1986 were adjourned at the parties' request.

22. At the hearing of 7 July 1986, the parties made their final submissions and the investigating judge referred the case to the competent chamber of the court, fixing the hearing for 25 November 1988. On 8 July 1986 the applicant, pleading his insecure financial circumstances, requested an earlier hearing date.

23. In accordance with this request, the hearing before the court chamber took place on 12 December 1986. On 30 January 1987 the court declared the defendants jointly and severally liable to pay the applicant damages of 64,467,590 Italian lire plus the statutory interest which had accrued since 10 October 1983, and awarded costs against them. The text of the judgment was lodged with the registry on 27 March 1987.

24. On 29 May 1987 the X insurance company appealed against the judgment. On 8 June 1987 the applicant also filed an appeal, claiming higher compensation. The first hearing before the investigating judge for the appeal procedure took place on 22 October 1987. Four more hearings took place on 14 January 1988 (when the parties requested an adjournment in order to file their final submissions), 25 February 1988, 14 April 1988 (adjourned at the appellant company's request, the applicant's counsel not being present) and 26 May 1988. On that date, the case was referred to the competent chamber of the Reggio Calabria Court of Appeal.

25. At the hearing on 1 December 1988, the parties requested an adjournment. The next hearing took place on 13 April 1989. By order of 20 April 1989, the Court of Appeal found that notice of the appeal by the X insurance company had not been given to the owner of the vehicle as a party whose participation was required to settle the dispute (*litisconsorte necessario*). The case was therefore referred back to the investigating judge for the appeal procedure.

26. Four hearings before the said investigating judge took place on 12 October 1989, 25 January 1990, 22 March 1990 and 28 June 1990, on which date the parties made their final submissions. On 15 November 1990 the Appeal Court, basing its decision on criteria differing to some extent from those adopted by the lower court, assessed the damage sustained by the applicant at 159,000,000 lire. The text of the decision was lodged with the registry on 6 December 1990.

27."

10. According to the information supplied to the European Court by the applicant, one of the defendants has appealed to the Court of Cassation and the date of the hearing has not yet been fixed.

PROCEEDINGS BEFORE THE COMMISSION

11. Mr Serrentino lodged his application with the Commission on 22 July 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. 12295/86) admissible. In its report of 6 March 1991 (Article 31) (art. 31), it expressed the opinion by nine votes to one that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion and of the dissenting opinion contained in the report 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-F of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

13. At the hearing the Government confirmed the submission put forward in their memorial, in which they requested the Court to hold "that there [had] been no violation of the Convention in the present case".

AS TO THE LAW

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

14. 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.

15. The period to be taken into consideration began on 11 September 1984 when the proceedings were instituted against the person responsible for the accident and his insurance company. It has not yet ended as the Court of Cassation has still to give judgment.

16. 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.

17. The Government invoked the conduct of the applicant. He had failed to display the diligence required in a civil trial.

18. In the Court's view the case is not a complex one. Despite that, as the Commission and the applicant rightly pointed out, there have been several periods of inactivity in the proceedings to date: no investigative measures were taken for more than eight months (7 March - 18 November 1985); more than five months elapsed before the first hearing in the competent chamber of the Reggio Calabria District Court (7 July - 12 December 1986); and the text of the judgment was not filed with the registry for nearly two months (30 January - 27 March 1987).

It is true that the parties were themselves responsible, at first instance and then on appeal, for several delays resulting in a total delay of about eleven months (see paragraph 9 above, nos. 21, 24 and 25), but at the applicant's request the District Court brought forward the date of one hearing from 25 November 1988 to 12 December 1986, nearly two years (*ibid.*, no. 23).

It should be noted finally that it took the Reggio Calabria Court of Appeal almost two years to find that the appeal filed by the X insurance company had not been notified to the owner of the car in question (29 May 1987 - 20 April 1989). Yet under the Italian Code of Civil Procedure the judicial authorities are responsible for ensuring that such steps are properly carried out.

19. In these circumstances and in view of what was at stake for the applicant, the Court cannot regard as "reasonable" in this instance a lapse of time which already amounts to more than seven years.

There has therefore been a violation of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

20. 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

21. Mr Serrentino claimed in the first place one thousand million Italian lire for damage.

22. There is no evidence that the violation found caused the applicant pecuniary damage. On the other hand, he suffered non-pecuniary damage for which the Court, making an assessment on an equitable basis, awards him 10,000,000 lire.

B. Costs and expenses

23. The applicant also sought 4,710,000 lire for the costs which he claimed to have incurred before the Convention organs.

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

C. Interest

24. 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.

25. 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, 10,000,000 (ten million) Italian lire for non-pecuniary damage and 4,710,000 (four million seven hundred and ten 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