

In the case of *Tumminelli 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 61/1991/313/384. 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 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. 13362/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Salvatore Tumminelli, on 29 October 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, 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, 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 and Lorenzi, Bernardini and Gritti\* should be heard by the same Chamber.

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\* 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; 51/1991/303/374; 58/1991/310/381; 59/1991/311/382

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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") 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 28 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 Salvatore Tumminelli is an Italian national and resides at Caltanissetta. He is a surveyor. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 17-21 of its report):

"17. On 29 May 1979 the applicant, who is a surveyor, applied to the presiding judge of the Caltanissetta District Court for a payment order against a Mr M., who he alleged

owed him the sum of 1,324,000 Italian lire for professional services. On 31 May 1979 the presiding judge issued an order to pay (decreto d'ingiunzione) against Mr M. who on 3 July 1979 contested the order and thus instituted ordinary civil proceedings against the applicant.

18. The investigation opened at the hearing of 22 November 1979, followed by that of 24 April 1980, when Mr M. requested an adjournment. The investigating judge fixed the following hearing for 26 June 1980, but was subsequently transferred. The hearing did not take place until 5 February 1981 and was held before the presiding judge of the District Court, replacing the investigating judge. The presiding judge gave no decision on the parties' requests for investigative measures and merely adjourned the hearing to 25 June 1981.

19. However, the hearing was not held until 4 February 1982, before the new investigating judge. On 8 February 1982 the investigating judge set down a hearing for 8 July 1982 for the examination of certain witnesses cited by the parties. On that date, two witnesses cited by the applicant and one witness cited by Mr M. were heard. The investigation of the case was adjourned to 24 March 1983 so that a second witness cited by Mr M. could be examined. However, the witness failed to appear because he had not been duly summoned.

20. The hearing was accordingly postponed to 29 September 1983 but did not take place until 11 April 1985, when the parties again requested the examination of the witness. The witness, though duly summoned, did not appear on 11 July 1985 or indeed at the hearing of 17 October 1985. On 6 February 1986 the investigating judge imposed a fine on the witness and ordered him to be brought by the police to the hearing on 6 March 1986.

21. However, that hearing did not take place because the investigating judge had been transferred. Following his replacement, a hearing was fixed for 12 January 1988 before the new investigating judge, but the applicant was not duly notified and did not appear. The hearing was therefore adjourned to 20 September 1988, when the investigating judge set down the hearing for the examination of the witness for 23 February 1989. However, the witness was prevented by illness from attending that hearing, which was postponed to 29 June 1989, with further adjournments by court order to 21 December 1989, 29 January 1991 and 5 November 1991."

10. According to the information provided to the European Court by the Government, on that last date the examination of the case was adjourned until 19 March 1992.

#### PROCEEDINGS BEFORE THE COMMISSION

11. Mr Tumminelli lodged his application with the Commission on 29 October 1987. 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. 13362/87) admissible. In its report of 5 March 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 231-H 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 contested this view, whereas the Commission accepted it.

14. The period to be taken into consideration began on 31 May 1979, the date of the payment order (see the *Pugliese (II) v. Italy* judgment of 24 May 1991, Series A no. 206-A, p. 8, para. 16), and it has not yet ended.

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 a witness's failure to appear and the transfers of investigating judges. In addition, the applicant had not requested that the latter be replaced more quickly, or that sanctions be taken against the witness, or again that he be compelled to appear.

17. The case is however a simple one. Furthermore there were long periods, ranging from about three months (11 April 1985 - 11 July 1985 and 11 July 1985 - 17 October 1985) to more than two years and nine months (8 July 1982 - 11 April 1985), between the various hearings before the competent judge. With one single exception, that requested by Mr M. on 24 April 1980, the numerous adjournments were not ordered at the parties' request, but were decided because of a delay in appointing the successor of a transferred judge on two occasions, because of the failure to communicate to the applicant the date of one of the hearings (12 January 1988) and because of the defective summons, the failure to appear or the non-availability, as the case may be, of one of the witnesses (24 March 1983, 11 July 1985, 17 October 1985 and 23 February 1989).

On this latter point, it should be stressed that the decision to have recourse to the testimony of a witness was taken in the context of judicial proceedings supervised by a judge (see, *mutatis mutandis*, the *Capuano v. Italy* judgment of 25 June 1987, Series A no. 119, p. 13, para. 30). More generally, 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).

Like the Commission, the Court also attaches importance to two periods of inactivity for which the State was essentially responsible, between 24 April 1980 and 5 February 1981 and then from that date until 4 February 1982; in particular, it emphasises for

its part too that no investigative measure appears to have been taken since 8 July 1982.

18. In those circumstances, it cannot regard as "reasonable" in this instance a lapse of time of more than twelve years for proceedings which are still at the stage of the investigation.

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 10,000,000 Italian lire for damage.

In the Government's contention, he failed to establish that he had sustained pecuniary damage. As to any non-pecuniary damage, a finding of a violation would provide sufficient just satisfaction.

The Commission considered that, in addition to reparation for non-pecuniary damage, Mr Tumminelli 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. The applicant may on the other hand have suffered a degree of non-pecuniary damage, but, in the circumstances of the case, the Court finds that the conclusion which appears in paragraph 18 of this judgment constitutes in this respect adequate satisfaction for the purposes of Article 50 (art. 50).

### B. Costs and expenses

22. The applicant also claimed 1,996,500 lire in respect of costs and expenses incurred before the Convention organs.

Having regard to the evidence at its disposal and to its case-law in this field, the Court awards the amount 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 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 this judgment constitutes in itself, as regards the non-pecuniary damage sustained, sufficient just satisfaction for the purposes of Article 50 (art. 50);
3. Holds that the respondent State is to pay Mr Tumminelli, within three months, 1,996,500 (one million nine hundred and ninety-six thousand five hundred) Italian lire for costs and expenses;
4. 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