

In the case of Tusa 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 44/1991/296/367. 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 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. 13299/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Antonio Tusa, on 7 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, Steffano, Ruotolo, Vorrasi, Cappello, G. v. Italy, Caffè Roversi S.p.a., Andreucci, Gana, Barbagallo, Cifola, Pandolfelli and Palumbo, Arena, Pierazzini, Cooperativa Parco Cuma, Serrentino, Cormio, Lorenzi, Bernardini and Gritti and Tumminelli\* 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 43/1991/295/366; 50/1991/302/373; 51/1991/303/374; 58/1991/310/381; 59/1991/311/382; 61/1991/313/384

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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 14 May (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 Antonio Tusa is an Italian national and resides at Caltanissetta. He is a salesman. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-26 of its report):

"16. On 27 November 1973 the applicant filed a suit with the Agrigento District Court against Mr R. and the X

insurance company, claiming compensation for damage sustained in a collision between his car and one driven by Mr R.

17. The investigation opened with the hearing held on 27 February 1974. The next hearing, set for 26 June 1974, was postponed to 15 January 1975 because the investigating judge was unable to attend. On 17 January the investigating judge called for a medical opinion. The hearing scheduled for 26 March 1975 was postponed at the request of the parties. At the hearing on 28 May 1975 the investigating judge heard Mr R., who was authorised to request copies of the police record of the accident and subsequent report for inclusion in the case-file.

18. At the hearings held on 3 December 1975, 17 March 1976, 19 May 1976, 23 February 1977, 1 June 1977 and 23 November 1977, the examination of the case was adjourned as Mr R. had been unable to obtain the documents requested from the police. Meanwhile, on 19 May 1976 the Istituto Nazionale delle Assicurazioni Malattia (INAM) had intervened in the proceedings and on 5 November 1976 the medical opinion had been lodged with the court registry.

19. At the hearing on 15 March 1978 the investigating judge summoned certain witnesses in accordance with a request submitted by the applicant at the start of the proceedings. The witnesses summoned to the hearing of 25 October 1978 did not appear until the hearing of 28 February 1979.

20. The next hearing, initially set for 24 October 1979, did not take place until 2 January 1980. On that date the defendant requested an adjournment in order to be able to submit the documents requested of the police.

21. Two further hearings took place on 30 April and 5 November 1980. At the close of the latter, the investigating judge directed that the hearing for final submissions should take place on 4 February 1981, but on that date Mr R. requested a further adjournment in order to produce the documents requested of the police. The Istituto Nazionale della Previdenza Sociale (INPS) then intervened in the proceedings in place of the INAM.

22. At the hearing on 17 June 1981 Mr R. produced copies of the police record and report of the accident. He asked that evidence be taken from two police officers who had inspected the scene of the accident.

23. The hearings due to take place on 9 December 1981 and 31 March 1982 were postponed because the two witnesses could not be located. At the hearing on 6 October 1982 the first police officer concerned was heard. At the hearing on 9 March 1983 it had still not been possible to call the other police officer.

24. The subsequent hearing, set for 2 November 1983, did not take place until 11 April 1984 and was postponed once again as the witness could not attend. The new hearing date, 4 July 1984, was postponed to 30 January 1985 because of elections. The following hearing, which was to have been held on 26 June 1985, did not take place until 5 March 1986.

25. On that date the parties made their final submissions and the investigating judge referred the case to the appropriate court chamber. The hearing before that

chamber, set for 4 December 1986, was postponed to 18 June 1987 and then to 3 March 1988 because the investigating judge had been transferred.

26. On 16 March 1988 the court declared the defendants jointly and severally liable to pay damages to the applicant. The text of the decision was lodged with the court registry on 28 April 1988.

27. ... ."

10. According to the information supplied to the European Court by the Government, Mr R. appealed against the District Court's judgment, on a date which has not been specified; the applicant and the X company filed cross-appeals on 26 September and 26 October 1988.

By a judgment of 5 April 1991, lodged with the registry on 8 October, the Palermo Court of Appeal dismissed Mr R.'s appeal and found for Mr Tusa. There does not as yet appear to have been an appeal to the Court of Cassation.

#### PROCEEDINGS BEFORE THE COMMISSION

11. Mr Tusa lodged his application with the Commission on 7 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. 13299/87) admissible. In its report of 5 December 1990 (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-D 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 disputed this view, whereas the Commission accepted it.

14. The period to be taken into consideration began on 27 November 1973, when the proceedings were instituted against Mr R. and the X company in the Agrigento District Court. It has not yet ended, as an appeal to the Court of Cassation from the judgment of the Palermo Court of Appeal remains possible.

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 excessive workload of the District Court and the transfer of the investigating judge.

17. The case was one of some complexity. However, the investigation in itself took more than twelve years (27 February 1974 - 5 March 1986). Although the parties contributed to slowing down the proceedings by several requests for adjournments, the Court also notes that there were numerous adjournments by the judicial authorities of their own motion. These adjournments were caused, among other things, by the difficulties which Mr R. encountered in obtaining various documents from the carabinieri and by the failure of various witnesses to appear, but the evidence does not show that the investigating judge took the necessary steps to surmount these obstacles. In addition, more than twenty-one months elapsed between the judge's ordering of a medical expert opinion and the lodging of the report (17 January 1975 - 5 November 1976). Finally, before the relevant chamber of the Agrigento District Court the proceedings remained dormant for nearly two years (5 March 1986 - 3 March 1988).

The Government pleaded the backlog of cases and the transfer of the investigating judge, 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 *Vocaturò v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 32, para. 17).

The State cannot be held responsible for the time it took Mr R. to lodge his appeal, but it is difficult to understand why the appeal proceedings were so long and why six months (5 April - 8 October 1991) elapsed between the adoption of the judgment and its filing with the registry.

18. Accordingly, the Court cannot regard as "reasonable" in this instance a lapse of time of approximately eighteen years for two levels of jurisdiction.

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 50,000,000 Italian lire for damage.

In the Government's contention, he sustained no pecuniary damage because the Agrigento District Court, then the Palermo Court of Appeal, ordered the defendants to pay compensation. As to non-pecuniary damage, a finding of a violation would provide sufficient just satisfaction.

21. There is no evidence that the violation found caused Mr Tusa pecuniary damage. 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 him 10,000,000 lire.

B. Costs and expenses

22. The applicant also claimed 3,993,000 lire in respect of costs and expenses incurred before the Commission.

Having regard to the evidence at its disposal and to its case-law in this field, the Court awards 2,000,000 lire under this head.

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 the respondent State is to pay to the applicant, within three months, 10,000,000 (ten million) Italian lire for non-pecuniary damage and 2,000,000 (two million) 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

