



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

**CASE OF T. v. ITALY**

*(Application no. 14104/88)*

JUDGMENT

STRASBOURG

12 October 1992

**In the case of T. 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 B. WALSH,

Mr C. RUSSO,

Mr J. DE MEYER,

Mr I. FOIGHEL,

Mr R. PEKKANEN,

Mr A.N. LOIZOU,

Mr F. BIGI,

Mr A.B. BAKA,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 25 May and 24 September 1992,

Delivers the following judgment, which was adopted on the last-mentioned date:

**PROCEDURE**

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 13 September 1991, 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. 14104/88) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr T., on 1 April 1988.

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

---

\* The case is numbered 80/1991/332/405. 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.

proceedings and designated the lawyer who would represent him (Rule 30). The President of the Court gave him leave to use the Italian language (Rule 27 para. 3) and decided, of his own motion, that, in view of the circumstances of the case, the applicant's identity would not be disclosed.

3. The Chamber to be constituted 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 28 September 1991, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr B. Walsh, Mr J. De Meyer, Mr I. Foighel, Mr R. Pekkanen, Mr A.N. Loizou, Mr F. Bigi and Mr A.B. Baka (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the 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 procedure (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 25 February 1992, the Government's memorial on 2 April and the Delegate's written observations on 20 May.

5. On 26 February the Chamber had decided to dispense with a hearing, having found that the conditions for such a derogation from the usual procedure were satisfied (Rules 26 and 38).

6. On 16 April the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

7. On 5 May the Government lodged their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50); the latter submitted a statement of his costs and expenses on 1 June.

## AS TO THE FACTS

### I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

8. On 19 May 1982 Mr T.'s minor daughter, who was at the time aged fourteen, lodged a complaint with the Genoa public prosecutor's office, which opened an investigation concerning T. in connection with an alleged rape. On 15 February 1983 it sent to him in Jeddah (Saudi Arabia) a "judicial notification" advising him that proceedings had been instituted and inviting him to provide an address for service in Italy.

The applicant claims that he did not receive the notification in question because on 13 February he had left Jeddah, where he had worked for a time,

for Khartoum (Sudan). He had, moreover, visited the Italian Embassy there to report his change of address.

9. On 26 November 1983 the investigating judge declared the applicant untraceable (*irreperibile*) and designated a lawyer to act for him. Thereafter all the documents which were to be notified to the applicant were lodged with the registry, his lawyer being informed thereof on each occasion.

10. On 13 December 1983 the investigating judge issued a warrant for Mr T.'s arrest, which was not executed as his whereabouts were unknown. In a report of 10 January 1984 the police noted that the applicant did not live at the place indicated.

11. After the investigating judge had committed the applicant for trial, the President of the Genoa District Court instructed the police to undertake new inquiries. On 25 September 1984 they drew up a report stating that their inquiries had proved unsuccessful; they advised the judge that, according to the information which they had obtained, the accused had found employment in the Sudan. The President in his turn declared Mr T. untraceable.

12. On 9 October 1984 the Genoa District Court convicted Mr T. in absentia and sentenced him to seven years' imprisonment, to be stripped of his civic rights and to accessory penalties.

13. As the officially-appointed lawyer had appealed, the police made further attempts to find Mr T., but to no avail (reports of 20 March and 7 July 1986), with the result that he was again declared untraceable. On 1 October 1986 the Genoa Court of Appeal upheld the contested judgment. The decision was notified to the applicant in the manner provided for in Article 500 of the Code of Criminal Procedure in force at the material time (see paragraph 21 below) because according to a police report of 7 November 1986 the applicant was still untraceable. No appeal was filed in the Court of Cassation.

14. On 4 March 1987 the Genoa public prosecutor's office issued a warrant for Mr T.'s arrest. On 20 August he was arrested in Copenhagen, on the premises of the Italian Embassy; he was extradited on 29 October. On his arrival in his country he received notification of his conviction and sentence and on 3 November 1987 the arrest warrant of 4 March was served on him.

15. On 5 November he lodged an objection to the execution of the warrant (*incidente d'esecuzione*). He complained that he had been convicted without being able to defend himself, despite the fact that the competent authorities had known his address.

The Genoa District Court dismissed his objection on 17 December. It considered that the applicant had been duly informed of the proceedings against him and that he had, in any case, been aware of them; this was shown in particular by a letter he had written to his wife on 30 September 1983.

The applicant filed an appeal on points of law, which the Genoa District Court found inadmissible on 10 March 1988 on the ground that no submissions had been lodged in support of it. Mr T. maintains that he was not given legal assistance to formulate such submissions.

Following a second appeal on points of law the Court of Cassation confirmed the finding of inadmissibility on 20 May 1988. It added that Mr T. could no longer, at the stage of the execution of a judgment which had since become final, raise complaints relating to the conduct of the proceedings.

16. At paragraphs 27 and 28 of its report, the Commission made the following findings of fact:

"27. The applicant acknowledges that he was indirectly aware of the proceedings against him because his wife had informed him in June 1982 that his daughter was pregnant and had accused him of rape.

Moreover, on 21 June 1982 he had written to the judge dealing with the case to contest the version of the facts given in the complaint ...

28. In addition, the applicant had explained his behaviour to his wife in a letter he sent her on 21 May 1983. That letter, bearing his address, had been added to the criminal file. He states that he wrote regularly to his wife, to whom he also sent money, and to his mother; [...] both of them knew his address. Lastly, he points out that his passport had been renewed on 8 February 1984 in Khartoum, and then again in 1987, also in Khartoum, implying a favourable opinion from the Italian Embassy in Saudi Arabia and the prefecture in Genoa. He was therefore not untraceable."

17. Before the Commission Mr T. had claimed that he had tried on several occasions to leave the Sudan between 15 February 1984 and 17 July 1987, but that the Sudanese authorities had prevented him from doing so.

18. He completed his sentence in 1991.

## II. THE RELEVANT DOMESTIC LAW

### A. Judicial notification

19. At the material time a judicial notification was the document by which the judicial authorities informed the person suspected of having committed an offence that an investigation had been opened and invited him to appoint a defence lawyer of his choice and to provide an address for service. It had to specify the legal provisions infringed and the date of the alleged offence.

20. The investigating judge, in the event of a "formal" investigation, or the public prosecutor, where the investigation was "summary", had to send the notification at the very beginning of their investigation (Articles 304 and 390 of the Code of Criminal Procedure).

The notification had to be sent by registered letter requiring acknowledgment of receipt. If the letter was not delivered because the addressee was untraceable (irreperibile), a bailiff had to serve the notification in accordance with the normal procedure (Articles 168 to 175 of the Code of Criminal Procedure).

### **B. Notifications and trial in absentia (contumacia)**

21. In its judgments in *Foti and Others v. Italy* of 10 December 1982 (Series A no. 56, p. 12, paras. 33-36), *Colozza v. Italy* of 12 February 1985 (Series A no. 89, p. 11, paras. 18-19, and pp. 12-13, paras. 21-23) and *Brozicek v. Italy* of 19 December 1989 (Series A no. 167, pp. 13-14, para. 26), the Court gave a brief description of the Italian legislation then in force as regards notification to a person or an accused who was "untraceable" and trial in absentia (contumacia).

In the present case it is necessary to cite Article 177 bis of the former Code of Criminal Procedure (replaced with effect from 24 October 1989), which provided as follows:

"Where there is precise information in the documents in the proceedings as to the place where the accused resides abroad, the public prosecutor or magistrate's court (pretore) shall send him by registered letter notification of the proceedings against him with an invitation to declare or otherwise give notice of an address for service in the place where the proceedings are conducted. This formality shall neither suspend nor delay the proceedings.

Where the accused's address abroad is unknown or where he has not declared or otherwise given notice of an address for service or if the information provided by him is insufficient or inadequate, the judge or the public prosecutor shall make the order (decreto) provided for in Article 170.

The above provisions shall not apply where the issue of an arrest warrant is mandatory."

The second sub-paragraph of Article 170 stated as follows:

"The judge or the public prosecutor ... shall take a decision appointing a defence lawyer to act for the accused where he does not yet have one in the place where the proceedings are conducted and ordering that notification which has proved impossible to carry out, or any future notification, be effected by means of lodging the relevant documents with the registry of the judicial organ before which the proceedings are pending. The defence lawyer shall be informed without delay when any such document is so lodged."

It is also necessary to reproduce the text of the following two Articles:

#### **Article 500**

"In the case of in absentia proceedings, an extract of the judgment shall be notified to the accused who may lodge against it any appeal that would have been open to him

in respect of a judgment delivered in adversarial proceedings, subject to the provisions of the third paragraph of Article 199."

#### Article 199

"...

For the judgments referred to in Article 500, the period within which the accused may appeal shall begin to run from the notification of the decision or judgment.

..."

### PROCEEDINGS BEFORE THE COMMISSION

22. The applicant lodged his application with the Commission on 1 April 1988; he relied on Articles 5 para. 1 (a), 6 paras. 1, 2 and 3 (a) to (d), 8, 9, 10, 13 and 14 (art. 5-1-a, art. 6-1, art. 6-2, art. 6-3-a, art. 6-3-b, art. 6-3-c, art. 6-3-d, art. 8, art. 9, art. 10, art. 13, art. 14) of the Convention. Under Article 6 (art. 6) he complained that the in absentia proceedings conducted against him had deprived him of the guarantees laid down therein.

23. On 3 December 1990 the Commission declared that last complaint admissible; it found the remainder of the application (no. 14104/88) inadmissible. In its report of 4 July 1991 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a breach of Article 6 para. 1 (art. 6-1). The full text of its opinion is reproduced as an annex to this judgment\*.

### AS TO THE LAW

#### I. ALLEGED VIOLATION OF ARTICLE 6 (art. 6)

24. The applicant complained that the Genoa District Court and Court of Appeal had tried him in absentia. There had, in his opinion, been a breach of Article 6 paras. 1 and 3 (a) to (d) (art. 6-1, art. 6-3-a, art. 6-3-b, art. 6-3-c, art. 6-3-d).

The Commission subscribed to this view; the Government denied that there had been any violation.

---

\* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 245-C of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

25. The Court recalls that the requirements of paragraph 3 of Article 6 (art. 6-3) are specific aspects of the right to a fair trial guaranteed under paragraph 1 (art. 6-1) (see, among many other authorities, the *Colozza v. Italy* judgment of 12 February 1985, Series A no. 89, p. 14, para. 26, and the *F.C.B. v. Italy* judgment of 28 August 1991, Series A no. 208-B, p. 20, para. 29). Like the Commission, it will examine the complaint from the point of view of that last provision, according to which:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

26. Although this is not expressly mentioned in paragraph 1 (art. 6-1), the object and purpose of the Article (art. 6) taken as a whole show that a person charged with a criminal offence is entitled to take part in the hearing (see the *Colozza* judgment, cited above, p. 14, para. 27, the *Brozicek v. Italy* judgment of 19 December 1989, Series A no. 167, p. 19, para. 45, and the *F.C.B.* judgment, cited above, p. 21, para. 33).

27. Mr T. denied having received the "judicial notification" of 15 February 1983. At the time he had already left Saudi Arabia to take up residence in Khartoum (see paragraph 8 above).

The Court is not therefore concerned with an accused who had been notified in person and who, having thus been made aware of the reasons for the charge, in an unequivocal manner waived his right to appear and defend himself. Accordingly, it does not, in this instance, have to determine whether and under what conditions an accused can waive exercise of this right (see the *F.C.B.* judgment, cited above, p. 21, para. 35).

The Government did not dispute the applicant's assertion. Yet they considered that it had not been prejudicial to his right to defend himself. They contended that the applicant had known perfectly well that he had been charged with rape, as was shown by his letter of 30 September 1983 to his wife; in their view, the truth of the matter was that he had deliberately evaded trial.

28. Like the Commission, the Court finds that the applicant had learned indirectly that criminal proceedings had been instituted against him. To inform someone of a prosecution brought against him is, however, a legal act of such importance that it must be carried out in accordance with procedural and substantive requirements capable of guaranteeing the effective exercise of the accused's rights, as is moreover clear from Article 6 para. 3 (a) (art. 6-3-a) of the Convention. Vague and informal knowledge cannot suffice.

Admittedly, during the investigation and then in the course of the trial proceedings, the police made fresh inquiries in order to discover Mr T.'s whereabouts, but these efforts were limited to the latter's address in Italy (see paragraphs 10, 11 and 13 above). Yet from the outset it was clear that the applicant was living abroad; indeed he had had his passport renewed by

the Italian consulate in Khartoum on 8 February 1984 (see paragraph 16 above). Notwithstanding this, the Italian judicial authorities declared him untraceable and then convicted and sentenced him on 9 October 1984 and 1 October 1986, without having ordered more thorough investigations.

29. It is difficult to reconcile this situation with the diligence which the Contracting States must exercise to ensure the effective enjoyment of the rights guaranteed under Article 6 (art. 6) (see, *inter alia*, the F.C.B. judgment, cited above, p. 21, para. 33).

According to the Government, the applicant bears the entire responsibility for this; after he had been declared "irreperibile", he had failed to provide an address for service.

The Court does not see how he could have done so, as there is no evidence that he knew what stage the proceedings conducted against him had reached.

30. In conclusion, Mr T. did not receive a fair trial. As the legislation in force at the time did not afford him any means of redress in this respect, there was a violation of Article 6 para. 1 (art. 6-1).

## II. APPLICATION OF ARTICLE 50 (art. 50)

31. 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."

The applicant claimed compensation for damage, without giving any figures, and 4,000,000 Italian lire for his costs and expenses before the Convention organs.

The Commission considered that it was appropriate to award Mr T. an amount for non-pecuniary damage and for costs and expenses.

32. The applicant may have suffered some non-pecuniary damage, but the Court is of the opinion that, in this instance, the conclusion appearing at paragraph 30 of the present judgment constitutes in itself sufficient just satisfaction for the purposes of Article 50 (art. 50).

As regards the costs and expenses, Mr T. received legal aid before the Commission and the Court; in the circumstances of the case, his claims must be dismissed.

**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 present judgment constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained;
3. Dismisses the remainder of the applicant's claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 12 October 1992.

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar