

In the case of Messina 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. Bernhardt, President,
Mr Thór Vilhjálmsson,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr C. Russo,
Mr N. Valticos,
Mr S.K. Martens,
Mrs E. Palm,
Mr F. Bigi,

and also of Mr M.-A. Eissen, Registrar,

Having deliberated in private on 29 October 1992 and 2 February 1993,

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

Notes by the Registrar

* The case is numbered 14/1992/359/433. 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 by the European Commission of Human Rights ("the Commission") on 13 April 1992, 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. 13803/88) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Antonio Messina, on 27 October 1987. Before the Commission the applicant was designated by the initial "M.", but he subsequently consented to the disclosure of his identity.

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 and Article 8 (art. 6-1, art. 8).

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; the President of the Court gave him leave to use the Italian language and to present his own case (Rules 27 para. 3 and 30 para. 1, second sentence).

3. On 25 April 1992 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 Pizzetti, De Micheli, F.M., Salesi, Trevisan and Billi v. Italy* should be heard by the same Chamber.

* Cases nos. 8/1992/353/427 to 13/1992/358/432.

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 Thór Vilhjálmsson, Mr F. Matscher, Mr L.-E. Pettiti, Mr N. Valticos, Mr S.K. Martens, Mrs E. Palm and Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

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 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 3 July 1992. By a letter of 23 July the Government stated that they wished to refer the Court to their observations before the Commission. The Delegate of the Commission lodged his written observations on 23 September.

6. On 26 May 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).

7. On 3 September the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

8. On 2 October 1992 the Government filed their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50).

9. As Mr Ryssdal was unable to attend the deliberations on 29 October, he was replaced as President of the Chamber by Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 5, second sub-paragraph).

AS TO THE FACTS

I. The particular circumstances of the case

A. The criminal proceedings brought against the applicant

10. The applicant, who was charged, on the testimony of an accused turned informer, with membership of a criminal organisation of the mafia type and with drugs offences, was arrested on 18 October 1985 under an arrest warrant issued the previous day by the investigating judge attached to the Marsala District Court, which also concerned seven other persons. The warrant mentioned two separate sets of proceedings. According to the applicant, an investigation was opened on 16 January 1980 in respect of proceedings registered under no. 35/80 and on 7 September 1984 for proceedings filed under no. 235/84. In their observations of 30 November 1988 before the Commission, the

Government indicated that the two sets of proceedings had been joined because of the connection existing between them, but that the applicant faced no charges in the second set of proceedings.

11. On 28 June 1990 the public prosecutor at the Marsala District Court filed his final submissions in regard to the other accused, but did not express an opinion concerning the applicant.

12. The investigation has been closed since 8 July 1992; the case is apparently still pending in the Marsala District Court.

B. The applicant's detention and the inspection of his correspondence

13. Mr Messina remained in detention on remand until 25 May 1987. The investigating judge questioned him on 23 October 1985 and then at the end of February 1986.

14. On 18 April 1987 the judge ordered that he be released, as the maximum permitted period of detention on remand had been exceeded. Under his order the applicant was required to lodge a security of fifty million Italian lire, to reside at Sciacca (Sicily) and to report every day at 5 p.m. to the police station to sign the register.

15. As the applicant had stated that he did not have the sum demanded, the ensuing verifications resulted in his detention being extended for one month. He was released on 25 May 1987. The requirement concerning the security was lifted. The other two conditions remained in force at first, but the investigating judge revoked them on 30 November 1987 (compulsory residence order) and 15 October 1988 (daily reporting to the police).

16. During his detention, Mr Messina had encountered some problems in connection with the forwarding of his mail.

17. According to the applicant, he never received the correspondence which had been sent to him in prison, with the exception of a letter from his lawyer; this letter was posted in December 1985, but did not reach him until March 1986. The correspondence which had been intercepted allegedly included a telegram from his wife, which had been sent in April 1987. The applicant had, he maintained, on several occasions asked the investigating judge for his mail to be delivered, but to no avail.

18. The Government replied that the applicant's correspondence had been subject to inspection by the investigating judge from 4 November 1985 onwards. Without being able to provide further details, they stressed that the applicant had been officially informed of this, at the latest, when the first duly approved letter reached him.

According to the Government, nine letters addressed to the applicant or sent by him were submitted for inspection: six whilst he was in detention at Caltanissetta and three during his imprisonment at Trapani.

19. The Commission declared admissible the complaints concerning the following five items, whose dates do not appear in the file:

(a) a letter to the applicant (no. 17655), submitted to the Marsala investigating judge for approval on 10 November 1985, approved on a date not recorded in the accompanying document provided by the Italian Government and returned to Caltanissetta prison on 29 November;

(b) a letter to the applicant (no. 20356), submitted for approval on 21 December 1985, approved on 28 December and returned to Caltanissetta prison on 2 January 1986;

(c) a letter to the applicant (no. 6158), submitted for approval on 5 April 1986; it reached the judge on 10 April 1986, was approved by him on 12 April and was returned to Caltanissetta prison on 17 April;

(d) a postcard addressed to the applicant (no. 9217), submitted for approval on 2 April 1987; it reached the judge on 6 April, was approved by him on 16 May 1987 and was returned to Trapani prison on 19 May;

(e) a telegram to the applicant (no. 11381), submitted for approval on 24 April 1987 and in respect of which it is not known when, if at all, it was approved and then returned to Marsala prison.

20. The Government affirmed that all the mail submitted for approval had been delivered to the applicant. In their observations of 27 October 1989 to the Commission, they conceded that the applicant had on several occasions complained in writing that he had not received the letters sent to him in prison.

II. The relevant domestic law

21. In its report the Commission gave a summary of the legislation applicable in this area:

"32. Questions relating to prisoners' correspondence are governed by the Prison Rules Act of 26 July 1975 (no. 354).

33. Section 18 of the Act permits prisoners to correspond with members of their families and others, even in order to transact legal business.

34. The correspondence of convicted persons may be subject to the approval of the prison governor, or of a prison officer designated by the governor, on the basis of a decision stating the reasons by the judge responsible for the execution of sentence (magistrato di sorveglianza).

35. For prisoners awaiting trial the decision whether to submit their correspondence for approval is a matter for the magistrato di sorveglianza in the case of those already committed for trial, or the investigating judge dealing with the case where the investigation has not been completed.

36. Under Article 36 of the Act's implementing regulation (Presidential Decree no. 431 of 29 April 1976), sealed correspondence is subject to inspection designed to detect the presence of money or prohibited articles. This inspection must be carried out in such a way that there can be no scrutiny of the written content of the correspondence.

37. When the governor suspects the presence of prohibited articles he retains the unopened envelope and immediately informs the magistrato di sorveglianza or the prosecuting authority so that they can take the necessary steps.

38. Letters subject to approval, either on the initiative of the prison authorities or in accordance with the decisions of the competent judicial authorities, may be either retained by the judge or forwarded to the prisoner.

39. When correspondence sent by the prisoner is retained, the latter must be informed immediately.

40. In addition, under section 35 of the Act prisoners may lodge a complaint (reclamo) about the application of the rules in a sealed envelope with:

a) the governor of the prison and/or the inspectors and the Director General of Prisons or the Minister of Justice,

b) the magistrato di sorveglianza,

c) visiting representatives of the judicial and health authorities,

d) the president of the region,

e) the Head of State."

PROCEEDINGS BEFORE THE COMMISSION

22. The applicant lodged his application with the Commission on 27 October 1987. Relying on Article 5 para. 3, Article 6 para. 1 and Article 8 (art. 5-3, art. 6-1, art. 8) of the Convention, he complained of the length of his detention on remand and that of the criminal proceedings brought against him and of interferences with his right to respect for his correspondence.

23. On 4 March 1991 the Commission declared inadmissible for failure to comply with the six-month time-limit (Article 26 para. 1 in fine of the Convention) (art. 26-1):

(a) the first complaint; and

(b) the third complaint in so far as it related to the decision of the investigating judge of 4 November 1985 ordering the inspection of Mr Messina's correspondence (see paragraph 18 above) and the belated forwarding of the letter sent to him by his lawyer in December 1985 (see paragraph 17 above).

On the other hand, it found the second complaint and the remainder of the third (see paragraph 19 above) admissible. In its report of 20 February 1992 (made under Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 1 and of Article 8 (art. 6-1, art. 8). The full text of the Commission's 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 257-H of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

AS TO THE LAW

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

24. The applicant alleged that the criminal proceedings brought against him had not been conducted within a "reasonable time" as required by Article 6 para. 1 (art. 6-1) of the Convention, according to which:

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

The Government contested this claim, whereas the Commission accepted it.

25. The period to be taken into consideration began on 18 October 1985, when Mr Messina was arrested. It has not yet ended as the proceedings are still pending in the Marsala District Court.

26. The reasonableness of the length of proceedings is to be determined 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.

27. The Government confined themselves to pleading the complexity of the case, without providing any details on the purpose, scale and result of the investigations undertaken by the competent officials.

28. In view of the nature of the charges preferred against the applicant, the Court accepts that the judicial authorities must have encountered some difficulties linked to the number of persons to be questioned and the number of witnesses to be heard, as well as to the need for evidence to be taken on commission.

It cannot however regard as "reasonable" in this instance a lapse of time which is already more than seven years for proceedings which have still to be completed.

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

II. ALLEGED VIOLATION OF ARTICLE 8 (art. 8)

29. Mr Messina complained of an interference with his right to respect for his correspondence, guaranteed under Article 8 (art. 8), according to which:

"1. Everyone has the right to respect for ... his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

30. Whether there was in fact "interference by a public authority" -over and above the requirement of the investigating judge's approval (see paragraph 23 above) - is a matter of dispute in this case. Mr Messina claimed that he had never received the letters, the post card and the telegram in respect of which the Commission found the complaint admissible (see paragraph 19 above), whereas the Government maintained that they had on the contrary been delivered. In this regard the present case is clearly distinguishable from the numerous cases

concerning restrictions on the correspondence of prison inmates that the Court has had to examine in the past (see, *inter alia*, the *Silver and Others v. the United Kingdom* judgment of 25 March 1983, and the *Campbell v. the United Kingdom* judgment of 25 March 1992, Series A nos. 61 and 233).

31. The Court is thus confronted with a dispute concerning the exact circumstances of the case rather than a legal problem and it must reach its decision on the basis of the available evidence. The information obtained led the Commission, to which under the Convention system the establishment and verification of the facts primarily falls (see, among other authorities, the *Cruz Varas and Others v. Sweden* judgment of 20 March 1991, Series A no. 201, p. 29, para. 74), to give credence to the applicant's allegations. At the same time the Government acknowledged that on several occasions Mr Messina had complained in writing of not receiving his correspondence (see paragraph 20 above).

As the Commission emphasised at paragraph 64 of its report, a Contracting State cannot claim to have discharged its obligations under Article 8 (art. 8) merely by supplying a record of a prisoner's incoming mail. In the absence of documents or other evidence such as might establish the contrary, the Court cannot be certain that the items in question reached their addressee.

It has accordingly to conclude that there has been a violation of Article 8 (art. 8).

III. APPLICATION OF ARTICLE 50 (art. 50)

32. Under 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."

33. The applicant claimed three thousand million Italian lire for pecuniary and non-pecuniary damage. He cited the impossibility of leading a normal family life and the feelings of bitterness and persecution which he had developed as a result of his problems with the judicial system.

34. Like the Government and the Commission, the Court observes that Mr Messina has adduced no evidence of any pecuniary damage deriving from the violation of Articles 6 para. 1 and 8 (art. 6-1, art. 8).

It considers, on the other hand and notwithstanding the contrary opinion of the Government, that the applicant suffered some non-pecuniary damage, for which the conclusions set out in paragraphs 28 and 31 above do not constitute sufficient satisfaction. It awards him 5,000,000 lire under this head.

35. The applicant did not seek the reimbursement of costs and expenses; according to the consistent case-law, this is not a matter for the Court to examine of its own motion.

FOR THESE REASONS, THE COURT

1. Holds unanimously that there has been a violation of Article 6 para. 1 (art. 6-1);

2. Holds by seven votes to two that there has been a breach of Article 8 (art. 8);
3. Holds unanimously that the respondent State is to pay to the applicant, within three months, 5,000,000 (five million) Italian lire for non-pecuniary damage;
4. 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 26 February 1993.

Signed: Rudolf BERNHARDT
President

Signed: Marc-André EISSEN
Registrar

Judges Pettiti and Russo state their dissent with the majority of the Court as regards point 2 of the operative provisions of the judgment (Rule 53 para. 2 in fine of the Rules of Court).

Initialled: R. B.

Initialled: M.-A. E.