

In the case of Pizzetti 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 8/1992/353/427. 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. 12444/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Bartolomeo Pizzetti, on 29 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 Articles 6 para. 1 and 13 (art. 6-1, art. 13).

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 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 De Micheli,

F.M., Salesi, Trevisan, Billi and Messina v. Italy* should be heard by the same Chamber.

* Cases nos 9/1992/354/428 to 14/1992/359/433.

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's lawyer on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received, on 6 July 1992, the memorial of the applicant, whom the President had given leave to use the Italian language (Rule 27 para. 3). By a letter of 21 July, the Government stated that they wished to refer the Court to their observations before the Commission. The Delegate of the Commission did not submit written observations.

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. 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).

9. On 20 October and 8 November 1992 respectively the Government and the Commission filed their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50).

AS TO THE FACTS

10. Mr Bartolomeo Pizzetti resides at Fontanella (Bergamo province). The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-25 of its report):

"16. On 6 September 1983 the applicant brought an action for damages against Mr G. before the Bergamo District Court in respect of the injuries he sustained when he was assaulted during an argument.

17. Investigation of the case began at the hearing of 27 October 1983, which was followed by four further hearings, on 14 November 1983 and on 2 February, 6 April and 14 June 1984. The following hearing, initially due to be held on 22 November 1984, was adjourned by the court proprio motu," - until 11 April 1985 - "because the investigating judge had been assigned to other duties.

The judge in question was subsequently transferred.

18. On 21 June 1986 the Bergamo District Court rejected a request by the applicant that a different investigating judge be appointed and that a date be set for a new hearing, on the ground that the workload of the various judges made it impossible to ask them to deal with other cases.

19. On 3 February 1988 the applicant repeated his request, and on 9 February 1988 a new investigating judge was appointed. Examination of the case was resumed at the hearing of 31 March 1988, which was adjourned at the applicant's request until 22 September 1988. The following hearing took place on 19 January 1989.

20. In a decision dated 15 March 1989 the investigating judge, granting a request made by the applicant, summoned certain witnesses to appear at the hearing of 31 October 1989 and an expert to appear at that of 2 November 1989.

21. These two hearings were adjourned on the ground that an attempt to reach a friendly settlement was in progress. At the hearing of 7 November 1989 the investigating judge noted that this attempt had been unsuccessful.

22. In the meantime the applicant had dismissed his lawyer, so that the hearing of 7 November 1989 and that of 22 March 1990 were adjourned in order to give him time to engage new counsel.

23. The following hearing, initially due to take place on 5 July 1990, was adjourned by the investigating judge proprio motu until 11 April 1991, and then - at the applicant's request - brought forward to 4 October 1990.

24. On that date the investigating judge, granting a request made by the lawyer representing the applicant, who had been reappointed, ordered an expert opinion and designated an expert for that purpose.

25. A hearing was arranged for 18 October 1990 so that the expert could take the oath. However, this hearing was adjourned until 29 November 1990, as the expert failed to appear. On the latter date the expert appointed took the oath.

26. ..."

11. According to the information supplied to the Court by the Government, on 24 January 1991 the expert relinquished his task because the applicant refused to undergo a medical examination which was to have taken place on 7 December 1990.

A hearing set down for 28 March 1991 was adjourned by order of the investigating judge until 3 October 1991.

At a date which has not been specified, the applicant was granted legal aid. His new lawyer was formally appointed on 12 April 1991. On 3 June he requested the replacement of the investigating judge, but to no avail. On 1 October 1991 the case was finally assigned to another judge.

A new expert was appointed on 26 March 1992 and received his instructions on 14 May.

The following hearing was to be held on 3 December 1992.

PROCEEDINGS BEFORE THE COMMISSION

12. Mr Pizzetti lodged his application with the Commission on 29 July 1986. He complained of the time taken to hear his civil action and the lack, in Italian law, of an effective remedy against the excessive length of proceedings. He relied on Articles 6 para. 1 and 13 (art. 6-1, art. 13) of the Convention.

13. On 2 July 1990 the Commission declared his application (no. 12444/86) admissible. In its report of 10 December 1991 (made under Article 31) (art. 31), it expressed the opinion that there had been a violation of Article 6 para. 1 (art. 6-1) (unanimously), but not of Article 13 (art. 13) (fourteen votes to six). 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 257-C 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)

14. The applicant alleged that his civil action had not been tried within a "reasonable time" as required by 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 claim, whereas the Commission accepted it.

15. The period to be taken into consideration began on 6 September 1983, when Mr G. was summonsed before the Bergamo District Court. It has not yet ended as the proceedings are still pending in the same court at the stage of the investigation.

16. 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.

17. The Government pleaded the applicant's conduct: by refusing to attend the first medical examination, arranged for 7 December 1990 (see paragraph 11 above), Mr Pizzetti had contributed to slowing down the proceedings. The transfer of the investigating judge and the excessive workload of the Bergamo District Court had been additional factors.

18. The Court, like the Commission, notes that the applicant's attitude is not sufficient in itself to explain the total duration of the proceedings. In particular, his attempt to secure a friendly settlement and the fact that he failed to attend the medical examination cannot justify the period of inactivity which lasted from 14 June 1984 to 31 March 1988 (see paragraph 10 above, nos. 17-19). Moreover, although some hearings were adjourned at his request, he also asked for three

others to be scheduled or brought forward (see the same paragraph, nos. 18, 19 and 23).

As regards the argument based on the backlog of cases pending before the Bergamo District Court, it should be recalled that Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements (see, among many other authorities, the *Tusa v. Italy* judgment of 27 February 1992, Series A no. 231-D, p. 41, para. 17).

19. Accordingly, it cannot regard as "reasonable" a lapse of time which is already more than nine years.

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

II. ALLEGED VIOLATION OF ARTICLE 13 (art. 13)

20. Mr Pizzetti complained that no effective remedy had been available to him before a national "authority" to challenge the excessive duration of the civil proceedings brought by him. He relied on Article 13 (art. 13) of the Convention, which is worded as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission took the view that this provision was inapplicable where, as here, the alleged violation took place in the context of judicial proceedings.

The Government did not express a view.

21. In view of its decision concerning Article 6 (art. 6), the Court does not consider it necessary also to examine the case under Article 13 (art. 13).

III. APPLICATION OF ARTICLE 50 (art. 50)

22. 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."

A. Damage

23. The applicant claimed 30,000,000 Italian lire for non-pecuniary damage, a claim which the Commission regarded as justified.

In the Government's opinion, on the other hand, a finding of a violation, if such a finding were to be made, would in itself constitute sufficient just satisfaction for the purposes of Article 50 (art. 50), in view of the applicant's conduct.

24. The Court finds that the applicant sustained clear non-pecuniary damage, for which it considers it fair to award him

10,000,000 lire.

B. Costs and expenses

25. Mr Pizzetti also sought 3,715,800 lire in respect of costs and expenses referable to the proceedings before the Convention organs.

The Government considered that this claim was founded on provisions, concerning lawyer's fees, which were part of the Italian domestic legal system and which did not therefore apply in the present case. However, they left the matter to be determined by the Court.

26. The Court shares the view of the Delegate of the Commission that the costs in question were genuinely and necessarily incurred and were reasonable as to quantum, and accordingly orders their reimbursement to the applicant in full.

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 it is not necessary also to examine the case under Article 13 (art. 13);
3. 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 3,715,800 (three million seven hundred and fifteen thousand eight hundred) 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 26 February 1993.

Signed: Rudolf BERNHARDT
President

Signed: Marc-André EISSEN
Registrar