

In the case of Trevisan 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 12/1992/357/431. 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. 13688/88) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Paolo Trevisan, on 2 February 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 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 Pizzetti,

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

* Cases nos. 8/1992/353/427 to 11/1992/356/430, 13/1992/358/432 and 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 15 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 23 July the Government stated that they wished to refer the Court to their observations before the Commission. The Delegate of the Commission did not lodge 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 Paolo Trevisan resides in Padua. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-18 of its report):

"16. On 18 July 1986 the applicant instituted proceedings against the AMP company before the Padua magistrate's court (pretore) seeking an order requiring AMP to pay him the arrears of salary to which he claimed entitlement, together with damages in respect of the company's failure to fulfil its obligations under his contract of employment and the premature termination of that contract.

The case was placed on the list on an unspecified date.

17. The Padua magistrate's court arranged for a hearing

to be held on 23 October 1986 with a view to an attempt at conciliation. The defendant company did not attend the hearing. The court then arranged for the next hearing to be held on 17 December 1986. On 4 May 1987 the Padua magistrate's court ruled that it lacked territorial jurisdiction over the case.

18. The applicant then instituted proceedings against AMP before the Treviso magistrate's court on 9 June 1987. Hearings were held on 12 January 1988 (appearance of the parties), 5 February 1988 and 3 June 1988 (hearing of witnesses). A fourth hearing at which the evidence was examined took place on 31 January 1989. This was followed on 19 December 1989 by a further hearing for one more witness to give evidence. At a hearing which took place on 1 June 1990 the defendant company put forward proposals for a settlement of the dispute. A hearing was arranged to take place on 26 June 1990 but had to be postponed because of the absence of the defendant company. The next hearing took place on 11 June 1991. This hearing was adjourned to give the parties time to explore the possibility of reaching a settlement. At the hearing of 26 June 1991 the parties filed their final submissions. The judgment of the magistrate's court was given on the same day and deposited with the registry on 6 July 1991. This judgment partly upheld the applicant's claims."

11. No appeal was filed against the magistrate's court's judgment and it became final on 7 July 1992.

PROCEEDINGS BEFORE THE COMMISSION

12. Mr Trevisan lodged his application with the Commission on 2 February 1988. Relying on Article 6 para. 1 (art. 6-1) of the Convention, he complained of the length of the civil proceedings instituted by him.

13. On 8 July 1991 the Commission declared the application (no 13688/88) inadmissible as out of time (Article 26 in fine of the Convention) (art. 26), as regards the period prior to 9 June 1987; it found it admissible for the rest. In its report of 9 December 1991 (made under Article 31) (art. 31), it expressed the opinion, by ten votes to one, 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*.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 257-F 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. In view of the Commission's decision on the admissibility of the application (see paragraph 13 above), the period to be taken into consideration began on 9 June 1987, when the AMP company was summonsed before the Treviso magistrate's court; it ended on 7 July 1992, the date on which the latter's decision became final (see paragraph 11 above).

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 stressed that the post of magistrate at the relevant court had been vacant when Mr Trevisan had brought his action and had remained so until December 1987. In addition, the numerous hearings which had been held between January 1988 and June 1991 had been necessary in order to hear witnesses and to examine an expert's report.

The applicant attacked the failure of the Italian State to take appropriate action in the field of the administration of justice, in particular as regards employment litigation.

18. In the Court's opinion, the case was of some complexity but this does not in itself explain the length of the proceedings. It is true that the parties' attempt at conciliation resulted in some delay, for which the State cannot be held responsible, but the same cannot be said of several periods of inactivity, namely from 9 June 1987 to 12 January 1988, from 3 June 1988 to 31 January 1989 and from 26 June 1990 to 11 June 1991 (see paragraph 10 above, no. 18).

As to the argument based on the vacant post at the Treviso magistrate's 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).

The Court notes finally that special diligence is necessary in employment disputes (see, among many other authorities, *mutatis mutandis*, the *Nibbio v. Italy* judgment of 26 February 1992, Series A no. 228-A, p. 10, para. 18). Italy moreover acknowledged this by amending, in 1973, the special procedure laid down in this field and by introducing, in 1990, emergency measures intended to speed up the conduct of such proceedings.

19. In these circumstances and in view of what was at stake in the proceedings for the applicant, the Court cannot regard as "reasonable" the time which elapsed in this case.

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

II. APPLICATION OF ARTICLE 50 (art. 50)

20. 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

21. The applicant claimed 30,000,000 Italian lire for damage. He maintained that in 1986, during the proceedings instituted in the Padua magistrate's court, he had had to sell certain property. In addition, his financial circumstances and his standard of living had suffered. The Delegate of the Commission in essence supported this claim.

In the Government's view, on the other hand, Mr Trevisan had failed to show the existence of a causal connection between the alleged breach and any pecuniary damage. As regards possible non-pecuniary damage, a finding of a violation would in itself constitute sufficient just satisfaction for the purposes of Article 50 (art. 50).

22. The Court considers that the alleged pecuniary damage cannot be taken into account, because it dates from a period prior to 9 June 1987 (see paragraphs 13 and 15 above).

Nevertheless the applicant must have suffered a degree of non-pecuniary damage, for which he should be awarded 10,000,000 lire.

B. Costs and expenses

23. The applicant also sought 6,477,130 lire for costs and expenses referable to the proceedings before the Convention organs. The Delegate of the Commission endorsed that claim.

The Government, on the other hand, considered that it 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.

24. Having regard to the evidence at its disposal and to its case-law in this field, the Court awards the applicant the sum claimed in its entirety.

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 6,477,130 (six million four hundred and seventy-seven thousand one hundred and thirty) 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 26 February 1993.

Signed: Rudolf BERNHARDT
President

Signed: Marc-André EISSEN
Registrar

