

In the case of Massa 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 R. Macdonald,
Mr C. Russo,
Mr A. Spielmann,
Mr S.K. Martens,
Mr I. Foighel,
Sir John Freeland,
Mr A.B. Baka,
Mr M.A. Lopes Rocha,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 23 April and 23 June 1993,

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

Notes by the Registrar

* The case is numbered 23/1992/368/442. 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 10 July 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. 14399/88) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Aldo Massa, on 2 November 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 Articles 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 26 September 1992 the President of the Court decided, under Rule 21 para. 6 and in the interests of the proper

administration of justice, that a single Chamber should be constituted to consider the instant case and the cases of Scuderi and M.R. v. Italy*.

Cases nos. 19/1992/364/438 and 20/1992/365/439.

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 26 September likewise, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr A. Spielmann, Mr S.K. Martens, Mr I. Foighel, Sir John Freeland, Mr A.B. Baka and Mr M.A. Lopes Rocha (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 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 Mr Massa's claim for just satisfaction (under Article 50 of the Convention) (art. 50) on 8 November 1992, the Government's memorial on 25 November and the observations of the Delegate of the Commission on 19 January 1993.

6. On 18 December 1992 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

7. In accordance with the decision of the President, who had given the applicant leave to use the Italian language (Rule 27 para. 3), the hearing took place in public in the Human Rights Building, Strasbourg, on 21 April 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr G. Raimondi, magistrato, on secondment
to the Diplomatic Legal Service,
Ministry of Foreign Affairs, Co-Agent;

(b) for the Commission

Mrs J. Liddy, Delegate;

(c) for the applicant

Mr G. Massa, avvocato, Counsel.

The Court heard addresses and statements by them.

AS TO THE FACTS

8. Mr Aldo Massa, a former army officer, lives at Viareggio (in the province of Lucca).

9. On 9 May 1967 he applied to the Ministry of Education for a reversionary pension following the death of his wife, who had been a headmistress.

By a decree of 21 March 1968 notified on 19 April 1968, the Ministry refused the application.

On 1 July 1968 Mr Massa lodged an appeal with the Court of Audit, in which he argued that the decree was unconstitutional in that it infringed the principle of equality secured in Article 3 of the Constitution. The appeal was dismissed on 6 February 1976.

10. On 25 January 1980 Law no. 33 of 9 December 1977 on equality of treatment between men and women in the field of employment was held in a judgment of the Constitutional Court to have retrospective effect. Mr Massa was consequently now entitled to claim a reversionary pension. On 20 October 1980 he therefore applied to the Ministry of Education, which on 16 May 1981 gave him a favourable reply. The pension was, however, granted only with effect from 18 December 1977, the date of commencement of Law no. 33. Some months earlier, on 1 April 1980, Mr Massa had lodged an "extraordinary" appeal with the President of Italy, complaining about his situation.

11. On 23 April 1985 Mr Massa applied to the Court of Audit to have the ministerial decision of 16 May 1981 quashed and the relevant pension awarded to him with effect from the first day of the month following his wife's death (23 March 1967).

12. On 29 June 1985 the file was passed to Principal State Counsel so that he could prepare the case and make his submissions, which were filed on 5 March 1986.

13. On 10 January 1987 the President of the appropriate division of the Court of Audit set the case down for hearing on 11 May 1987. On 18 July 1986 the applicant had sent the registry a memorandum in which he applied - unsuccessfully - for his case to be dealt with more quickly.

At the hearing the Court of Audit ordered the relevant authorities to produce certain documents it needed in order to reach its decision. These were filed on 19 January and 28 December 1987 and 12 March 1988.

14. Thereupon, the office of the Lucca provincial Director of Education suspended the execution of a decree of 3 November 1986 in which the Ministry of Education had determined the final amount of the pension. Mr Massa was informed of this on 29 October 1987.

15. A hearing due to be held on 21 November 1990 was postponed to 25 January 1991 at the applicant's request.

16. On that date the Court of Audit allowed Mr Massa's application. The text of its decision was filed at the registry on 18 March 1991.

17. On 19 November 1990 the applicant had reported to the Commission that nothing had yet come of his appeal of 1 April 1980 to the Italian President.

18. According to information supplied by the Government and by counsel for the applicant, the office of the Lucca provincial Director of Education took formal note on 3 August 1992 of the Court of Audit's judgment, thus making it possible for the pension in issue to be paid from the end of November 1992. The interest and the compensation for monetary depreciation were to be paid shortly by the regional office of the Treasury.

PROCEEDINGS BEFORE THE COMMISSION

19. Mr Massa applied to the Commission on 2 November 1988. He alleged that as he had not been able to have the free enjoyment of a reversionary pension, his right to respect for his family life had been infringed (Article 8 of the Convention) (art. 8); that he had not had an effective remedy (Article 13) (art. 13) for the decision by the office of the Lucca provincial Director of Education to suspend the execution of the decree of 3 November 1986; and that the length of the trial of his action in the Court of Audit and his appeal to the Italian President had exceeded the "reasonable time" laid down in Article 6 para. 1 (art. 6-1).

20. On 8 July 1991 the Commission declared the application (no. 14399/88) admissible in respect of the complaint based on the length of the proceedings brought in the Court of Audit on 23 April 1985 and declared it inadmissible as to the remainder. In its report of 13 May 1992 (made under Article 31) (art. 31), the Commission expressed the opinion by six votes to two that there had been a violation of Article 6 para. 1 (art. 6-1). 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 265-B of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

GOVERNMENT'S FINAL SUBMISSIONS TO THE COURT

21. At the hearing the Government asked the Court to dismiss Mr Massa's application.

AS TO THE LAW

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

22. The applicant complained of the length of the proceedings in the Court of Audit from 23 April 1985 onwards. He relied on Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations
..., everyone is entitled to a ... hearing within a
reasonable time by [a] ... tribunal ..."

A. Applicability of Article 6 para. 1 (art. 6-1)

23. The applicant and the Commission considered that this provision was applicable in the instant case, whereas the Government argued the opposite.

24. In the Government's submission, the right to a reversionary pension was not a personal, economic one, as the service relationship between the State and the applicant's wife had been governed entirely by public law. Nor did it derive from a contract of employment, since the appointment of civil servants originated in a unilateral act by the administrative authorities that was subject to special legislation.

25. The applicant asserted, on the contrary, that while a civil servant was indeed bound by a public-law contract with the State for the duration of his service, retirement or death put him, or his heirs, in a position similar to that of a private-sector employee.

26. Disputes relating to the recruitment, careers and termination of service of public servants are as a general rule outside the scope of Article 6 para. 1 (art. 6-1) (on recruitment to the civil service, see the *Glaserapp and Kosiek v. Germany* judgments of 28 August 1986, Series A no. 104, p. 26, para. 49, and no. 105, p. 20, para. 35), but State intervention by means of a statute or delegated legislation has not prevented the Court from finding in several cases that the right in issue was a civil one (see, among other authorities, the *Francesco Lombardo and Giancarlo Lombardo v. Italy* judgments of 26 November 1992, Series A no. 249-B, p. 26, para. 17, and no. 249-C, p. 42, para. 16).

Notwithstanding the public-law aspects pointed out by the Government, the present dispute arose from an obligation on the State to pay a reversionary pension to the husband of a public servant in accordance with the legislation in force. In performing this obligation, the State is not using discretionary powers and may be compared, in this respect, to an employer who is a party to a contract of employment governed by private law. Accordingly, the applicant's right to a reversionary pension is a "civil" one within the meaning of Article 6 para. 1 (art. 6-1), which is therefore applicable in the present case.

B. Compliance with Article 6 para. 1 (art. 6-1)

27. It remains to be determined whether a "reasonable time" was exceeded.

The Commission and the applicant said it had been; the Government said it had not.

28. The period to be considered did not begin, as the applicant maintained, when he applied to the Ministry of Education on 20 October 1980, but only on 23 April 1985, when he applied to the Court of Audit (see paragraphs 10-11 above). It ended on 18 March 1991, when that court's judgment was filed (see, as the most recent authority, the *Giancarlo Lombardo v. Italy* judgment previously cited, Series A no. 249-C, p. 43, para. 18).

29. 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.

30. The Government relied on the complexity of the case and on the conduct of the applicant, who was responsible for the postponement of the hearing of 21 November 1990 (see paragraph 15 above). They also pleaded the excessive workload of the relevant division of the Court of Audit.

31. Like the Commission, the Court notes that it was a fairly straightforward case and that the aforementioned adjournment scarcely prolonged the proceedings; moreover, on 18 July 1986 Mr Massa had tried to expedite them (see paragraph 13 above). It has to be pointed out, on the other hand, that there were two periods of inactivity attributable to the respondent State: from 5 March 1986 (when Principal State Counsel filed his submissions) to 11 May 1987 (first hearing) and from 12 March 1988 (when the last documents requested by the Court of Audit were filed) to 21 November 1990 (second hearing).

The Government's last submission cannot be accepted as 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, as the most recent authority, the Trevisan v. Italy judgment of 26 February 1993, Series A no. 257-F, p. 17, para. 18).

In these circumstances, the delays which have been noted were sufficiently substantial for the overall length of the proceedings to have to be regarded as excessive.

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

II. 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."

A. Damage

33. The applicant sought 100,000 ECUs (XEU) in respect of pecuniary damage and XEU 250,000 in respect of non-pecuniary damage. He pointed to the impossibility of buying a house for lack of means and the feelings of anxiety and distress throughout the proceedings.

34. In the Commission's view, compensation can be awarded only for pecuniary damage arising from the period in excess of a reasonable time, and not from the total length of the proceedings. The applicant had, however, sustained a degree of pecuniary and non-pecuniary damage, for which he should be awarded XEU 5,000.

35. Like the Government, the Court notes that Mr Massa did not prove the existence of pecuniary damage resulting from the breach of Article 6 para. 1 (art. 6-1). Moreover, Italian law provides for full compensation for monetary depreciation and the payment of interest at an annual rate of 10% to successful litigants.

As to the second aspect of the alleged damage, the Government also relied on the entry into force of the legislative decree of 8 March 1993 (no. 54), which set up regional divisions of the Court of Audit designed to bring the court nearer to the public. Mr Massa none the less sustained non-pecuniary damage which the Court considers is not sufficiently compensated by a mere finding of a breach of the Convention. He should therefore be awarded 10,000,000 Italian lire.

B. Costs and expenses

36. The applicant further sought 8,365,000 lire in respect of costs and expenses incurred in the proceedings before the Strasbourg institutions.

The Government left the matter to the discretion of the Court, which regards the amount sought as reasonable and awards it in full.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Article 6 (art. 6) applies in the instant case and has been breached;
2. Holds that the Italian State is to pay the applicant, within three months, 10,000,000 (ten million) Italian lire in respect of non-pecuniary damage and 8,365,000 (eight million three hundred and sixty-five thousand) lire in respect of 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 24 August 1993.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar