

In the case of Muti 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. Bernhardt,
Mr F. Gölcüklü,
Mr L.-E. Pettiti,
Mr C. Russo,
Mr N. Valticos,
Mr I. Foighel,
Mr R. Pekkanen,
Mr G. Mifsud Bonnici,

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

Having deliberated in private on 25 November 1993 and 22 February 1994,

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

* Note by the Registrar: The case is numbered 32/1993/427/506. 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.

PROCEDURE

1. The case was referred to the Court by the Italian Government ("the Government") on 29 July 1993, 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. 14146/88) against the Republic of Italy lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by an Italian national, Mr Giovanni Muti, on 15 June 1988.

The Government's application referred to Articles 44, 45 and 48 (art. 44, art. 45, art. 48) and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the application 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), who was given leave by the President to use the Italian language (Rule 27 para. 3).

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 25 August 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr F. Gölcüklü, Mr L.-E. Pettiti, Mr N. Valticos, Mr I. Foighel, Mr R. Pekkanen and Mr G. Mifsud Bonnici (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission 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 19 October 1993, the Government's memorial on 15 November 1993 and the observations of the Delegate of the Commission on 25 November 1993.

5. On 4 October 1993 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. On 23 November 1993 the Chamber decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from the usual procedure had been met (Rules 26 and 38).

7. On 7 December 1993 the Government filed certain documents requested by the Registrar on the President's instructions (Rule 37 para. 1 in fine).

AS TO THE FACTS

8. Mr Giovanni Muti lives in Bergamo. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (see paragraphs 6-10 of its report):

"6. Following an examination by a Ministry of Health medical board in Bergamo on 21 March 1975, the applicant was declared physically unfit to continue to perform his duties at the Bergamo State Counsel's office. In an order (decreto) issued on 10 April 1975 and registered at the Court of Audit on 2 May 1977 the Ministry of Justice acknowledged his right to a pension from 8 April 1975.

7. On 27 August 1975 Mr Muti applied for an enhanced pension on the ground that his invalidity had been caused by the performance of his duties. He was examined by the military medical board, which submitted its opinion on 30 November 1978. As a result of this opinion, the Ministry refused the application by an order of 2 March 1979; the reason given was that, according to the 1978 medical report, some of the applicant's health problems had not been caused by the duties he had performed, while others, although they could have been caused by them, were not such as to make him unfit for work.

8. On 1 June 1979 the applicant appealed to the Court of Audit against that decision. On 24 October 1979 the court's secretariat requested the Ministry of Justice to send it the applicant's file, and this was done on 15 November 1979. On 3 December 1979 the file was forwarded to Principal State Counsel at the Court of Audit (Procuratore Generale presso la Corte dei Conti) for him to prepare the case and file his submissions.

9. On 3 April 1984 Principal State Counsel requested the Ministry of Defence medical board to examine the applicant and give its opinion as to the causes and extent of his health problems. The medical report was received by the Principal State Counsel's office on 2 December 1986. On 20 January 1987 Principal State Counsel filed submissions to the effect that Mr Muti's application should be refused.

10. On 22 May 1987 the President of the Third Judicial

Division set the case down for hearing on 16 September 1987. On 7 September 1987 the applicant submitted a private medical report. After the hearing, the court adopted a decision which partly granted his application in that it recognised his right to an enhanced pension in respect of the health problems that had arisen from the performance of his duties. This judgment, delivered at final instance, was filed at the registry on 8 January 1988 and communicated to the applicant's lawyer on 22 April 1988."

PROCEEDINGS BEFORE THE COMMISSION

9. Mr Muti applied to the Commission on 15 June 1988. Relying on Article 6 para. 1 (art. 6-1) of the Convention, he complained of the length of the proceedings he had brought in the Court of Audit.

10. The Commission declared the application (no. 14146/88) admissible on 12 January 1993. In its report of 5 May 1993 (made under Article 31) (art. 31), it expressed the unanimous opinion 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 281-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)

11. Mr Muti complained of the length of the proceedings conducted in the Court of Audit. He alleged a breach of Article 6 para. 1 (art. 6-1) of the Convention, which provides as follows:

"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 allegation, whereas the Commission agreed with it.

12. The period to be taken into consideration began on 1 June 1979, the date of the appeal to the Court of Audit, and ended on 8 January 1988 when that court's judgment was filed. It thus lasted slightly more than eight years and seven months.

13. 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.

14. The Government pleaded the excessive workload of the Court of Audit and the conduct of the applicant. He had failed to request that his case be dealt with more quickly. Yet he could have had the proceedings expedited in accordance with a practice subsequently endorsed in a circular (*ordine di servizio*) issued by Principal State Counsel at the Court of Audit. This document dated 28 October 1988, a copy of which was produced by the Government (see paragraph 7 above), provides for a derogation under certain conditions from the rule that applications must be examined chronologically. Furthermore, a letter of 30 November 1993 from an official of the relevant division of the Court of Audit confirmed that in 1980 cases with registration numbers near to Mr Muti's case number had been given priority following

requests from the persons concerned.

15. The argument based on the excessive workload, as the Court has repeatedly held, cannot be taken into consideration since 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 *Massa v. Italy* judgment of 24 August 1993, Series A No. 265-B, p. 21, para. 31).

16. On the issue of the applicant's conduct, it should be noted, as the Commission pointed out, that the Government have not shown that the possibility afforded to Mr Muti of speeding up the proceedings was a real one. Despite the information provided by the Government, there is no proof that such a step would have had any prospects of success, regard being had in addition to the discretionary power of the competent judicial authority and its excessive workload. In these circumstances, it would not appear that the applicant's alleged passivity contributed to slowing down the proceedings.

17. On the other hand, it is apparent from the file that there were two main periods of stagnation attributable to the respondent State: Principal State Counsel waited four years and four months before requesting an expert opinion, the only investigative measure taken (see paragraph 8, nos. 8 and 9, above), and there was then a period of two years and eight months before the medical report was filed (see paragraph 8, no. 9, above).

18. Accordingly and in view of what was at stake in the proceedings for Mr Muti, 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)

19. 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

20. The applicant sought 20,000,000 Italian lire for non-pecuniary damage in respect of the long period of uncertainty which he had had to endure.

21. The Government considered this claim unfounded and excessive. In view of Mr Muti's conduct, the mere finding of a violation, if any, would afford sufficient just satisfaction.

The Delegate of the Commission regarded the amount claimed as disproportionate but recommended that an award be made, which he did not quantify.

22. Taking its decision on an equitable basis, the Court awards the applicant 10,000,000 lire.

B. Costs and expenses

23. Mr Muti also sought 5,011,050 lire in respect of the costs and expenses relating to the proceedings before the Strasbourg

institutions.

The Government left this matter to the Court's discretion.

24. Like the Delegate of the Commission, the Court finds the claim reasonable. It therefore accepts it 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 the respondent State is to pay the applicant, within three months, 10,000,000 (ten million) Italian lire in respect of non-pecuniary damage and 5,011,050 (five million eleven thousand and fifty) Italian 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 23 March 1994.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar