



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF RAIMONDO v. ITALY

(Application no. 12954/87)

JUDGMENT

STRASBOURG

22 February 1994

In the case of Raimondo 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. MATSCHER,

Mr C. RUSSO,

Mrs E. PALM,

Mr I. FOIGHEL,

Mr F. BIGI,

Mr L. WILDHABER,

Mr D. GOTCHEV,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 23 September 1993 and 24 January 1994,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 18 January 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. 12954/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Giuseppe Raimondo, on 23 April 1987.

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) of the Convention, Article 1 of Protocol No. 1 (P1-1) and Article 2 of Protocol No. 4 (P4-2).

* Note by the Registrar: The case is numbered 1/1993/396/474. 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.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, Mrs Pittelli, Mr Raimondo's wife, and their three sons informed the Registrar on 7 June 1993 of the death of their husband and father. They stated that they wished to continue the proceedings and to take part in them and be represented by the lawyer whom they had appointed (Rule 30). For reasons of convenience Mr Raimondo will continue to be referred to as the "applicant", although it is now his widow and his three sons who are to be regarded as having that status (see, *inter alia*, the Pandolfelli and Palumbo v. Italy judgment of 27 February 1992, Series A no. 231-B, p. 16, para. 2).

Mrs Pittelli and her sons also consented to the disclosure of the identity of Mr Raimondo, who had at first been designated by the initials G. R.

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 27 February 1993 Mr R. Bernhardt, the Vice-President of the Court, drew by lot, in the presence of the Registrar, the names of the other seven members, namely Mr Bernhardt, Mr F. Matscher, Mrs E. Palm, Mr I. Foighel, Mr F. Bigi, Mr L. Wildhaber and Mr D. Gotchev (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 Italian Government ("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 12 July 1993 and the Government's memorial on 30 July. The Delegate of the Commission did not submit observations in writing.

5. On 6 September 1993 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. 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 20 September 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr G. RAIMONDI, magistrato,

on secondment to the Diplomatic Legal Service of the
Ministry of Foreign Affairs,

Co-Agent,

Mr E. SELVAGGI, Head of the Human Rights Department,

Directorate General of Criminal Affairs, Ministry of
Justice,

Counsel;

- for the Commission

Mr E. BUSUTTIL,

Delegate;

- for the applicant

Mr M. MELLINI, avvocato,

Counsel.

The Court heard addresses by the above-mentioned representatives, who also replied to its questions.

On 14 October 1993 the Government provided additional information. The Commission submitted its written comments thereon on 11 December.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

7. Mr Giuseppe Raimondo, a building entrepreneur, lived in Davoli (Catanzaro) until his death on 11 July 1992.

Criminal proceedings were brought against him as he was suspected of belonging to a mafia-type organisation operating in the Soverato region. At the same time various preventive measures were taken concerning him.

A. The criminal proceedings

8. On 24 July 1984 the Catanzaro Public Prosecutor issued a warrant for the arrest of seventeen persons including the applicant. After initially evading arrest under this warrant, the applicant gave himself up to the authorities on 7 November 1984 and was immediately remanded in custody.

9. The investigation was closed on 24 July 1985 and Mr Raimondo was committed for trial in the Catanzaro District Court with fourteen co-defendants. His detention on remand was replaced by house arrest (*arresti domiciliari*).

10. On 8 October 1985, at the first hearing, the District Court ordered the joinder of the case with two others and directed that certain documents be included in the file. It then adjourned the proceedings to 16 January 1986.

On 30 January 1986 the District Court acquitted Mr Raimondo on the ground of insufficient evidence (*assoluzione per insufficienza di prove*) and revoked the order placing him under house arrest.

11. Giving judgment on 16 January 1987 on the appeals of the public prosecutor and Mr Raimondo, the Catanzaro Court of Appeal acquitted the latter on the ground that the material facts of the offence had not been established (*perchè il fatto non sussiste*). No appeal was filed in the Court of Cassation.

B. The proceedings concerning the preventive measures

1. In the Catanzaro District Court

12. On 16 January 1985 the Catanzaro Public Prosecutor applied to the District Court for an order placing Mr Raimondo under special police supervision and for the preventive seizure of a number of assets with a view to their possible confiscation (Act no. 1423 of 27 December 1956 and Act no. 575 of 31 May 1965, as amended by Act no. 646 of 13 September 1982 - see paragraphs 16-18 below). He based his application on a report by the Soverato carabinieri dated 27 December 1984.

13. On 13 May 1985 the District Court ordered the seizure of sixteen items of real property (ten plots of land and six buildings) and of six vehicles, all of which appeared to be at the applicant's disposal. The measure was entered in the relevant public registers on 15 May 1985.

On 16 October the District Court revoked the seizure of certain property belonging to third parties; on the other hand, it ordered the confiscation of some of the buildings seized of which the applicant and his wife were the owners and four vehicles, on the ground that it had not been proved that the assets in question had been "lawfully acquired". The confiscation was recorded in the register on 9 November 1985.

By the same decision Mr Raimondo was placed under special police supervision, which however did not become effective until 30 January 1986, the day on which he was acquitted by the District Court (see paragraph 10 above); he was also required to lodge a security of 2,000,000 lire as a guarantee to ensure that he complied with the constraints attaching to this measure, namely a prohibition on leaving his home without informing the police; an obligation to report to the police on the days indicated to that effect; an obligation to return to his house by 9 p.m. and not to leave it before 7 a.m. unless he had valid reasons for doing so and had first informed the relevant authorities of his intention.

2. In the Catanzaro Court of Appeal

14. On an appeal by the applicant, the Catanzaro Court of Appeal gave judgment at a private hearing on 4 July 1986. It annulled the special supervision measure and ordered the restitution of the security and the property seized and confiscated. Its decision (decreto) referred to the "disconcertingly casual way in which the contested preventive measures concerning the person and property of Mr Raimondo had been adopted thereby effectively decreeing his civil and economic death".

The decision was filed with the registry on 2 December 1986 and signed by the relevant official of the prosecuting authority on 10 December. Again on 2 December the Court of Appeal registry notified it to the competent police authorities (questura) who, on 5 December, advised the local

carabinieri of the decision. The latter informed the applicant on 20 December.

The decision became final on 31 December 1986.

15. The revocation of the seizure of the real property and of the confiscation of the vehicles was entered in the relevant registers on 2 February (real property), 10 February (two cars and a van) and 10 July 1987 (a lorry).

The security was returned to the applicant on 24 April 1987.

As regards the real property that had been confiscated, the applications for the entry in the register of the revocation of the measure are dated 9 August 1991.

II. RELEVANT DOMESTIC LAW

A. The legislation in force at the material time

1. *The Act of 27 December 1956*

16. Act no. 1423 of 27 December 1956 ("the 1956 Act") provides for various preventive measures in respect of "persons presenting a danger for security and public morality". The relevant provisions are summarised in the *Guzzardi v. Italy* judgment of 6 November 1980 (Series A no. 39, pp. 17-19, §§ 46-49):

"46. Under section 1, the Act applies to, amongst others, ... individuals who, by reason of their behaviour and style of life (*tenore di vita*), must be considered as habitually living, even in part, on the proceeds of crime or on the rewards of complicity therein (*con il favoreggiamento*), or whose outward conduct gives good reason to believe that they have criminal tendencies (*che, per le manifestazioni cui abbiano dato luogo, diano fondato motivo di ritenere che siano proclivi a delinquere*).

The Chief of Police [(*questore*)] may send such persons a warning (*diffida*) ...

...

47. ...

48. ... [such a person] may, under section 3, be placed under special police supervision (*sorveglianza speciale della pubblica sicurezza*); if need be, this may be combined either with a prohibition on residence in one or more given districts or provinces or, in the case of a particularly dangerous person (*particolare pericolosità*), with an order for compulsory residence in a specified district (*obbligo del soggiorno in un determinato comune*).

Only the District Court of the chief town of the province has power to order these measures; it will do so on the basis of a reasoned application by the [*questore*] to its president (section 4, first paragraph). The District Court must give a reasoned decision

(provvedimento) in chambers within thirty days. It will first hear the Public Prosecutor's department and the person concerned, the latter being entitled to submit written pleadings and to be assisted by a lawyer (section 4, second paragraph).

The prosecuting authorities and the person concerned may, within ten days, lodge an appeal which does not have suspensive effect; the Court of Appeal has to give a reasoned decision (decreto) in chambers within thirty days (section 4, fifth and sixth paragraphs). That decision may in turn and on the same conditions be the subject of a further appeal to the Court of Cassation, which must give its ruling in chambers within thirty days (section 4, seventh paragraph).

49. When adopting one of the measures listed in section 3, the District Court will specify for how long it is to remain in force - not less than one and not more than five years (section 4, fourth paragraph) - and will give directives with which the person in question must comply (section 5, first paragraph).

..."

2. The Act of 31 May 1965

17. Act no. 575 of 31 May 1965 ("the 1965 Act") supplements the 1956 Act by adding clauses directed against the Mafia (disposizioni contro la mafia). Section 1 states that it is applicable to persons - such as Mr Raimondo - against whom there is evidence showing that they belong to "mafia-type" groups (indiziati di appartenere ad associazioni mafiose).

18. The above legislation was strengthened by Act no. 646 of 13 September 1982 ("the 1982 Act") which inserted, inter alia, a section 2 ter in the 1965 Act. It makes provision for various measures to be used in the course of proceedings relating to the application of the preventive measures available under the 1956 Act in respect of a person suspected of belonging to such an organisation:

"... the District Court may issue a reasoned decision, even of its own motion, ordering the seizure of property at the direct or indirect disposal of the person against whom the proceedings have been instituted, when there is sufficient circumstantial evidence, such as a considerable discrepancy between his lifestyle and his apparent or declared income, to show that the property concerned forms the proceeds from unlawful activities or their reinvestment.

Together with the implementation of the preventive measure the District Court shall order the confiscation of any of the goods seized in respect of which it has not been shown that they were lawfully acquired. Where the inquiries are complex, this measure may also be taken at a later date, but not more than one year after the date of the seizure.

The District Court shall revoke the seizure order when the application for preventive measures is dismissed or when it has been shown that the property in question was lawfully acquired."

B. The case-law concerning the application of preventive measures, particularly of a pecuniary nature

19. In its report (paragraph 43), the Commission sets out a summary of the case-law in this area:

" ... The existence of preventive measures is not in itself contrary to the Italian Constitution. The Constitutional Court has ruled that the basis for these measures is the need to guarantee the orderly and peaceful course of social relations, not only through a body of legislation penalising unlawful acts, but also through provisions intended to prevent the commission of such acts (Constitutional Court, judgment no. 27 of 1959 and judgment no. 23 of 1964).

Because of their particular object, preventive measures do not relate to the commission of a specific unlawful act but to a pattern of behaviour defined by law as conduct indicating the existence of danger to society (Constitutional Court, judgment no. 23 of 1964).

Consequently, in the Italian legal system, there is a fundamental difference between criminal penalties and preventive measures. The former constitute the response to an unlawful act and the consequences of that act; the latter are a means of preventing the commission of such an act.

In other words, a criminal penalty relates to an offence already committed, whereas a preventive measure is intended to reduce the risk of future offences (see, *mutatis mutandis*, Constitutional Court, judgment no. 53 of 1968, concerning security measures).

...

Because criminal penalties and preventive measures are essentially different, not all the constitutional principles which should underpin the former necessarily apply to the latter. For example, the presumption of innocence enunciated in Article 27 of the Constitution does not concern preventive measures, which are not based on the criminal liability or guilt of the person concerned (Constitutional Court, judgment no. 23 of 1964).

Similarly, such measures do not fall within the scope of Article 25 para. 2 of the Constitution, which prohibits the retroactive application of criminal provisions. The violation of this principle has been alleged on a number of occasions in the Court of Cassation with regard to confiscation orders under section 2 ter of the 1965 Act. The Court of Cassation has ruled, firstly, that the above principle is not applicable to preventive measures (see, for example, Court of Cassation, Piraino judgment of 30 January 1985). Secondly, the Court of Cassation has pointed out that the impugned provision is not in fact retroactive, as it relates to the property in the possession of the person concerned at the time when confiscation is ordered (Court of Cassation, Oliveri judgment of 12 May 1986) and to the unlawful use of that property after its entry into force (Court of Cassation, Pipitone judgment of 4 January 1985).

In spite of these limitations, preventive measures remain open to thorough scrutiny of their compatibility with the Constitution.

As far back as 1956 the Constitutional Court ruled that in no case could the right to liberty be restricted except where such restriction was prescribed by law, where lawful proceedings had been instituted to that end and where the reasons therefor had been set out in a judicial decision (Constitutional Court, judgment no. 11 of 1956).

It subsequently ruled that preventive measures could not be adopted on the basis of mere suspicion and are justified only when based on the objective establishment and assessment of facts which reveal the behaviour and lifestyle of the person concerned (Constitutional Court, judgment no. 23 of 1964).

More recently it confirmed that the constitutionality of preventive measures still depends on respect of the rule of law and the possibility of applying to the courts for a remedy. Furthermore, the above two conditions are closely linked. Thus it is not enough for the law to indicate vague criteria for the assessment of danger; it must set them forth with sufficient precision to make the right of access to a court and adversarial proceedings a meaningful one (Constitutional Court, judgment no. 177 of 1980).

The case-law of the Court of Cassation is in this respect entirely consistent with that of the Constitutional Court; it affirms quite clearly that proceedings for the application of preventive measures must be adversarial and conducted with respect for the rights of the defence, any violation of those rights entailing their nullity (see, for example, Court of Cassation, judgment no. 1255 of 29 June 1984 in the Santoro case).

The Court of Cassation has dismissed a number of complaints alleging the unconstitutionality of the seizure and confiscation measures provided for in section 2 ter of the 1965 Act. In particular, it has ruled that the presumption concerning the unlawful origin of the property of persons suspected of belonging to organisations of the mafia type is not incompatible with Article 24 of the Constitution, which guarantees the rights of the defence, since confiscation can only take place when there is sufficient circumstantial evidence concerning the unlawful origin of the property in question and in the absence of a rebuttal (Court of Cassation, previously cited Pipitone judgment).

...

With regard to the compatibility of seizure and confiscation measures with the right to free exercise of private economic activities and the right to peaceful enjoyment of private property (Articles 41 and 42 of the Constitution), the Court of Cassation has ruled that these rights are not absolute and may be limited in accordance with the general interest. This applies in connection with possessions of unlawful origin or their use (Court of Cassation, previously cited Oliveri and Pipitone judgments).

..."

20. In its opinion no. 1489/86 of 18 November 1986 the Consiglio di Stato stated that "although confiscation by definition enables the State to acquire the item of property in question ..., it does not in itself have the effect of transferring ownership to the public authorities ...". It will only have such effect if in addition the decision ordering it is irrevocable (Palermo District Court, order of 19 April 1989).

PROCEEDINGS BEFORE THE COMMISSION

21. Mr Raimondo applied to the Commission on 23 April 1987. He complained of the following: (a) the unlawfulness and the length of his detention (Article 5 paras. 1 and 3 of the Convention) (art. 5-1, art. 5-3); (b) the length of various proceedings concerning him and in particular the criminal proceedings (Article 6 para. 1) (art. 6-1); (c) the failure to respect the right to be presumed innocent inasmuch as preventive measures were applied to him (Article 6 para. 2) (art. 6-2); (d) the obligation to lodge a security in order to ensure compliance with the above measures (Article 1 of Protocol No. 4) (P4-1); (e) an interference with his property resulting from the seizure and confiscation of certain of his possessions (Article 1 of Protocol No. 1) (P1-1); and (f) the fact that he had been deprived of his right to freedom of movement (Article 2 of Protocol No. 4) (P4-2).

22. On 6 December 1991 the Commission declared the application (no. 12954/87) admissible as regards the complaints based on the applicant's right to peaceful enjoyment of his possessions, to the freedom of movement and to a decision on the application of preventive measures within a reasonable time; it found the rest of the application inadmissible. In its report of 21 October 1992 (made under Article 31) (art. 31), it expressed the following opinion:

(a) that there had been no violation of Article 1 of Protocol No. 1 (P1-1) with regard to the seizure (eighteen votes to one) and the confiscation (sixteen votes to three) of the applicant's property up to 31 December 1986 and on account of the damage occasioned by the administration of the seized and confiscated assets until that date (eighteen votes to one);

(b) that there had been a violation of Article 1 of Protocol No. 1 (P1-1) in so far as the confiscation of nine items of real property and one lorry had continued to take effect after 31 December 1986 (unanimously);

(c) that there had been a violation of Article 2 of Protocol No. 4 (P4-2) inasmuch as the applicant had been deprived of his right to freedom of movement from 4 July to 20 December 1986 (unanimously);

(d) that there had been no violation of Article 6 para. 1 (art. 6-1) as regards the length of the proceedings relating to the seizure and confiscation (unanimously).

The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to the present judgment*.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 281-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

23. In their memorial, the Government asked the Court "to hold and adjudicate that there had been no infringement either of the Convention or of Protocols Nos. 1 and 4".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

24. Mr Raimondo complained of the seizure on 13 May 1985 of sixteen items of real property and six vehicles, and the confiscation of several of these assets ordered on 16 October 1985 (see paragraph 13 above). He relied on Article 1 of Protocol No. 1 (P1-1), which provides as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

25. In order to determine whether the contested measures amounted to controlling the "use of property" within the meaning of the second paragraph or constituted deprivation of possessions under the first paragraph, the Court will first examine their application up to 31 December 1986, when the decision of the Catanzaro Court of Appeal became final (see paragraph 14 above). It will then consider the matter of their remaining entered in the public registers subsequent to that date (see paragraph 15 above).

A. The application of the preventive measures concerning property up to 31 December 1986

26. The Government did not deny that there had been an interference with the applicant's right to peaceful enjoyment of his possessions. They contended, however, that the seizure and confiscation was justified on the basis of the exceptions allowed under Article 1 (P1-1) to the principle set forth in the first sentence of that provision.

1. The seizure

27. Like the Commission, the Court finds that the seizure was provided for in section 2 ter of the 1965 Act (see paragraph 18 above) and did not purport to deprive the applicant of his possessions but only to prevent him from using them. It is therefore the second paragraph of Article 1 of Protocol No. 1 (P1-1) which is relevant here.

In addition, the applicant did not contend that on 13 May 1985 it was unreasonable for the District Court to hold that there was sufficient circumstantial evidence to show that the possessions seized represented the proceeds from unlawful activities or their reinvestment. What he complained about is, rather, that such a drastic measure was taken at this stage of the proceedings. However, seizure under section 2 ter of the 1965 Act is clearly a provisional measure intended to ensure that property which appears to be the fruit of unlawful activities carried out to the detriment of the community can subsequently be confiscated if necessary. The measure as such was therefore justified by the general interest and, in view of the extremely dangerous economic power of an "organisation" like the Mafia, it cannot be said that taking it at this stage of the proceedings was disproportionate to the aim pursued.

Accordingly, on this point no violation of Article 1 of Protocol No. 1 (P1-1) has been established.

2. The confiscation

28. In the applicant's submission, even if it was accepted that the confiscation had not deprived him of the ownership of his possessions, the entry in the public registers represented a form of enforcement of the measure before any decision had been given on his appeal.

29. Although it involves a deprivation of possessions, confiscation of property does not necessarily come within the scope of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (P1-1) (see the *Handyside v. the United Kingdom* judgment of 7 December 1976, Series A no. 24, p. 30, para. 63, and the *AGOSI v. the United Kingdom* judgment of 24 October 1986, Series A no. 108, p. 17, para. 51).

According to Italian case-law, confiscation of the kind which is in issue in this case could not moreover have the effect of transferring ownership to the State until there had been an irrevocable decision (see paragraph 20 above). There was no such decision in this instance because Mr Raimondo had challenged the order of the Catanzaro District Court of 16 October 1985 (see paragraph 13 above). Here too therefore it is the second paragraph of Article 1 (P1-1) which applies.

30. Like the Government and the Commission, the Court observes that the confiscation - also provided for in section 2 ter of the 1965 Act -pursued an aim that was in the general interest, namely it sought to ensure that the

use of the property in question did not procure for the applicant, or the criminal organisation to which he was suspected of belonging, advantages to the detriment of the community.

The Court is fully aware of the difficulties encountered by the Italian State in the fight against the Mafia. As a result of its unlawful activities, in particular drug-trafficking, and its international connections, this "organisation" has an enormous turnover that is subsequently invested, *inter alia*, in the real property sector. Confiscation, which is designed to block these movements of suspect capital, is an effective and necessary weapon in the combat against this cancer. It therefore appears proportionate to the aim pursued, all the more so because it in fact entails no additional restriction in relation to seizure.

Finally, the preventive purpose of confiscation justifies its immediate application notwithstanding any appeal.

In conclusion, the respondent State did not overstep the margin of appreciation left to it under the second paragraph of Article 1 (P1-1).

3. The surveillance of the property seized or confiscated

31. Again relying on Article 1 of Protocol No. 1 (P1-1), Mr Raimondo alleged that, as the municipal police had failed to carry out any proper surveillance, the property subject to the preventive measures had been the target of extensive vandalism.

32. The Government denied this. In view of the official status of those responsible for guarding the property - officers of the municipal police designated by the judicial authorities - no accusation of negligence against them was warranted. Furthermore in 1989 legislation had been enacted to regulate this question, firstly by protecting the interests of persons whose property was returned to them after seizure and secondly by indicating a public-interest use for property which had been seized and then confiscated on a permanent basis.

33. Like the Commission, the Court observes that any seizure or confiscation inevitably entails damage. The Commission found that the applicant's allegations did not provide a sufficiently clear basis for examining whether the actual damage sustained in the present case exceeded such inevitable damage. Before the Court the applicant did not furnish any more specific information. The Court therefore cannot but adopt the Commission's approach and hold that on this point too no violation of Article 1 of Protocol No. 1 (P1-1) has been established.

B. The fact that the contested measures remained entered in the public registers after 31 December 1986

34. According to the applicant the competent authorities delayed giving effect to the decision of the Catanzaro Court of Appeal of 4 July 1986.

35. The Government maintained that the real property and the movable goods had been returned on 2 February 1987, only two months after the above-mentioned decision had been filed with the registry. They conceded that the formalities for entering in the public registers the revocation of the contested measures had taken some time, but Mr Raimondo could and should have contacted the appropriate department with a copy of the decision revoking the measures. Article 619 of the former Code of Criminal Procedure, cited by his lawyer at the hearing, was not applicable because it concerned exclusively the cancellation by the prosecuting authorities of mortgages or seizures ordered to secure the payment of the debts of a defendant after his conviction (court costs, fine and prison expenses).

36. The Court notes in the first place that the possessions in question were returned to the applicant on 2 February 1987, two months after the Court of Appeal's decision was filed with the registry. It must nevertheless consider whether the fact that the entries remained in the relevant registers constituted an interference with the right guaranteed under Article 1 of Protocol No. 1 (P1-1).

No such interference occurred in relation to the real property seized on 13 May 1985 and three of the vehicles confiscated on 16 October 1985, because the requisite entries were made rapidly, on 2 and 10 February 1987 (see paragraph 15 above). On the other hand, there was an interference as regards the lorry and the nine items of real property confiscated on 16 October 1985 inasmuch as the entry concerning the lorry was not made until 10 July 1987 and that concerning the real property not until after 9 August 1991 (see paragraph 15 above).

It is not for the Court to determine who should have taken the appropriate steps in this case. However, and notwithstanding the reasons advanced by the Government, the responsibility of the public authorities was engaged. The Court finds it hard to see why it was necessary to wait respectively more than seven months (2 December 1986 - 10 July 1987) and four years and eight months (2 December 1986 - 9 August 1991) before regularising the legal status of some of Mr Raimondo's possessions, when the Catanzaro Court of Appeal had ordered that all the property be returned to the owners "after the entries had been removed from the registers" (*previa cancellazione delle formalità concernenti le eseguite trascrizioni*).

In addition, this interference was neither "provided for by law" nor necessary "to control the use of property in accordance with the general interest" within the meaning of Article 1 of Protocol No. 1 (P1-1).

Accordingly, there has been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 (P4-2)

37. The applicant complained that the special police supervision under which he had been placed had constituted a violation of Article 2 of Protocol No. 4 (P4-2), according to which:

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

...

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

..."

38. The Government disputed this view. The decision, adopted in private session, revoking the special supervision had not acquired legal force, according to the relevant provisions, until the day on which it had been filed with the registry, namely 2 December 1986. Up to that point it had remained "a purely internal event". The Catanzaro Court of Appeal could not be criticised for failing to give its decision within thirty days, as provided for in section 4 of the 1956 Act, because that time-limit was not a mandatory one.

39. The Court considers in the first place that, notwithstanding the applicant's assertion to the contrary, the measure in issue did not amount to a deprivation of liberty within the meaning of Article 5 para. 1 (art. 5-1) of the Convention. The mere restrictions on the liberty of movement resulting from special supervision fall to be dealt with under Article 2 of Protocol No. 4 (P4-2) (see the *Guzzardi v. Italy* judgment, cited above, p. 33, para. 92).

In view of the threat posed by the Mafia to "democratic society", the measure was in addition necessary "for the maintenance of ordre public" and "for the prevention of crime". It was in particular proportionate to the aim pursued, up to the moment at which the Catanzaro Court of Appeal decided, on 4 July 1986, to revoke it (see paragraph 14 above).

It remains to consider the period between 4 July and 20 December 1986, when the decision was notified to the applicant (see the same paragraph). Even if it is accepted that this decision, taken in private session, could not acquire legal force until it was filed with the registry, the Court finds it hard to understand why there should have been a delay of nearly five months in drafting the grounds for a decision which was immediately enforceable and concerned a fundamental right, namely the applicant's freedom to come and go as he pleased; the latter was moreover not informed of the revocation for eighteen days.

40. The Court concludes that at least from 2 to 20 December 1986 the interference in issue was neither provided for by law nor necessary. There has accordingly been a violation of Article 2 of Protocol No. 4 (P4-2).

III. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 OF THE CONVENTION (art. 6-1)

41. Mr Raimondo finally criticised the length of the proceedings relating to his appeal against the confiscation and the special supervision. He relied on Article 6 para. 1 (art. 6-1) of the Convention, which provides as follows:

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

42. The period to be taken into consideration began on 16 October 1985, the date on which the Catanzaro District Court ordered the measures in question (see paragraph 13 above). It ended on 31 December 1986, when the decision of the Court of Appeal became final. It therefore lasted one year, two months and two weeks.

43. The Court shares the view taken by the Government and the Commission that special supervision is not comparable to a criminal sanction because it is designed to prevent the commission of offences. It follows that proceedings concerning it did not involve "the determination ... of a criminal charge" (see the *Guzzardi* judgment cited above, p. 40, para. 108).

On the matter of confiscation, it should be noted that Article 6 (art. 6) applies to any action whose subject matter is "pecuniary" in nature and which is founded on an alleged infringement of rights that were likewise of a pecuniary character (see the *Editions Périscope v. France* judgment of 26 March 1992, Series A no. 234-B, p. 66, para. 40). That was the position in the instant case.

44. However, having regard to the fact that the case came before two domestic courts, the Court does not consider the total length of the proceedings to have been unreasonable (see, *mutatis mutandis*, the *Salerno v. Italy* judgment of 12 October 1992, Series A no. 245-D, p. 56, para. 21). It follows that there has been no violation of Article 6 para. 1 (art. 6-1).

IV. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

45. Under Article 50 (art. 50) of the Convention,

"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

46. Mr Raimondo claimed compensation for pecuniary and non-pecuniary damage without giving any figures. The fact that he had to halt his construction work following the confiscation of his property and the unsatisfactory conditions in which it had been kept had resulted in substantial deterioration of the buildings and the vehicles. The imposition of the special supervision had made it difficult for him to move around and impossible for him to conduct his business. In addition, the delay in entering the revocation of the confiscation had meant that any attempt to dispose of the property in question had been bound to fail, which had led to an increase in his already heavy debts.

47. According to the Government, the applicant failed to show that the alleged violations had resulted in pecuniary damage. As regards any non-pecuniary damage, they were of the opinion that, if a violation were to be found, the finding would in itself afford sufficient just satisfaction.

48. The Delegate of the Commission considered that the applicant had undoubtedly sustained pecuniary and non-pecuniary damage. However, in the absence of any specific claim, he was uncertain of the approach to be adopted.

49. The Court dismisses the claims for pecuniary damage as the terms in which they are formulated are too vague and the information contained in the file does not help to clarify the matter. On the other hand, it takes the view that Mr Raimondo suffered some non-pecuniary damage for which it awards him 10,000,000 Italian lire.

B. Costs and expenses

50. At the hearing the applicant's lawyer sought the reimbursement of 10,552,325 lire (inclusive of value added tax) in respect of the costs and expenses incurred before the Convention institutions.

51. The Government left this matter to the discretion of the Court, but pointed out that the sum awarded should be proportionate to the degree of success, if any, of Mr Raimondo's application.

The Delegate of the Commission did not express an opinion on the question.

52. In view of the failure of some of Mr Raimondo's complaints, the Court, having regard to the available evidence and to its relevant case-law, awards him 5,000,000 lire.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that no violation of Article 1 of Protocol No. 1 (P1-1) has been established either in respect of the seizure and the confiscation of the applicant's property up to 31 December 1986 or in respect of the damage occasioned by those measures;
2. Holds that there has been a breach of that same Article (P1-1) inasmuch as the confiscation, on 16 October 1985, of a lorry and nine items of real property remained entered in the relevant registers after 31 December 1986 and that no other violation of that provision has been established;
3. Holds that there has been a violation of Article 2 of Protocol No. 4 (P4-2) at least in so far as the special police supervision of the applicant continued after 2 December 1986;
4. Holds that Article 6 (art. 6) of the Convention does not apply to the said special supervision;
5. Holds that there has been no violation of that provision as regards the length of the confiscation proceedings;
6. Holds that the respondent State is to pay to Mr Raimondo, within three months, 10,000,000 (ten million) Italian lire for non-pecuniary damage and 5,000,000 (five million) lire for costs and expenses;
7. Dismisses the remainder of the applicant's claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 February 1994.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar