

In the case of Terranova v. Italy (1),

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 Rules of Court B (2), as a Chamber composed of the following judges:

Mr R. Bernhardt, President,
Mr F. Gölcüklü,
Mr F. Matscher,
Mr C. Russo,
Mr A. Spielmann,
Mr A.N. Loizou,
Sir John Freeland,
Mr J. Makarczyk,
Mr D. Gotchev,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 28 September and 21 November 1995,

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

Notes by the Registrar

1. The case is numbered 28/1995/534/620. 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. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning the States bound by Protocol No. 9 (P9).

PROCEDURE

1. The case was referred to the Court by the Italian Government ("the Government") on 7 March 1995, 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. 17156/90) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by an Italian national, Mr Giuseppe Terranova, on 11 June 1990. The applicant, who was initially designated by the letters G.T., subsequently consented to the disclosure of his identity.

The Government's application 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 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) of the Convention.

2. In response to the enquiry made in accordance with Rule 35 para. 3 (d) of Rules of Court B, the applicant stated that he did not wish to take part in the proceedings.

3. On 5 May 1995 the President of the Court decided, under Rule 21 para. 7 and in the interests of the proper administration of justice, that a single Chamber should be constituted to consider the instant case and the case of Ciricosta and Viola v. Italy (1).

1. Case no. 5/1995/511/594.

4. The Chamber to be constituted for that purpose included ex officio Mr C. Russo, the elected judge of Italian nationality (Article 43 (art. 43) of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On the same day, in the presence of the Registrar, Mr R. Ryssdal, the President of the Court, drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr F. Matscher, Mr A. Spielmann, Mr A.N. Loizou, Sir John Freeland, Mr J. Makarczyk and Mr D. Gotchev (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

5. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 28 July 1995. The Delegate of the Commission replied on 23 August 1995.

6. On 29 June 1995 the Chamber had 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 27 and 40).

7. On 19 July 1995 the Government filed their observations on the claims for just satisfaction that the applicant had communicated to the Registrar on 31 May 1995 (Article 50 (art. 50) of the Convention and Rule 52 para. 1 read in conjunction with Rule 1 (i)).

8. On 21 July 1995 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

AS TO THE FACTS

9. Mr Giuseppe Terranova is a pensioner living in Messina, where he was formerly a municipal employee.

10. On 25 April 1985 he applied to the Court of Audit (Third Ordinary Division) in Rome seeking judicial review of a Treasury order whereby he had been granted an enhanced pension but was required to repay half of a sum he had previously received as compensation for invalidity occasioned during the performance of his official duties. The application was registered on 3 May 1985. On 20 November 1985 the applicant asked for a date to be fixed for the hearing.

On 24 January 1986 the Third Ordinary Division received the applicant's administrative file from the Treasury, in accordance with its request of 20 May 1985.

11. On 11 July 1986, in the course of proceedings concerning a non-military pension, the Sicily Judicial Division of the Court of Audit raised an objection of unconstitutionality concerning Article 3 of Legislative Decree no. 655 of 6 May 1948, which had set up Divisions of the Court of Audit in Sicily.

On 25 February 1988 the Constitutional Court declared the above provision unconstitutional, inasmuch as it did not give the Sicily Judicial Division jurisdiction over, among other matters, disputes between the administrative authorities and employees of the State or the region resident in Sicily.

In pursuance of that judgment, the applicant's case file was sent to the Sicily Judicial Division in Palermo on 17 October 1988.

12. On 26 October 1992 the President of the Division set the case down for hearing on 2 March 1993. On that date the court ruled that it lacked jurisdiction *ratione materiae* and declared the application inadmissible. The judgment was deposited with the registry on 15 June 1993.

13. The applicant did not recommence the proceedings in the Regional Administrative Court.

PROCEEDINGS BEFORE THE COMMISSION

14. Mr Terranova applied to the Commission on 11 June 1990. He complained that his case had not been heard within a reasonable time as required by Article 6 para. 1 (art. 6-1) of the Convention.

15. The Commission (First Chamber) declared the application (no. 17156/90) admissible on 6 September 1994. In its report of 7 December 1994 (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 (1).

1. Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 337-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

16. In their memorial the Government asked the Court to hold that there had been no violation of Article 6 para. 1 (art. 6-1) of the Convention.

AS TO THE LAW

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

17. The applicant complained of the length of the proceedings brought by him in the Court of Audit. He alleged a violation of 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 ..."

18. The Government contested this allegation, whereas the Commission upheld it.

19. The period to be taken into consideration began on 3 May 1985, when Mr Terranova's application was registered by the Court of Audit registry, and ended on 15 June 1993, when the judgment dismissing the application was deposited in the registry (see, as the most recent authority, the *Paccione v. Italy* judgment of 27 April 1995, Series A no. 315-A, p. 8, para. 17).

Contrary to the Government's submission, the period of approximately twenty months taken by the Constitutional Court to rule on an objection of unconstitutionality should not be deducted. Although that court's decision of 25 February 1988 (see paragraph 11 above) affected the proceedings, inasmuch as the file was transferred to the Judicial Division of the Court of Audit in Palermo, which had acquired jurisdiction (see paragraph 11 above), the proceedings in the Court of Audit in Rome were never stayed during the period referred to (see, *mutatis mutandis*, the *Giancarlo Lombardo v. Italy* judgment of 26 November 1992, Series A no. 249-C, p. 43, para. 18). The period to

be examined thus lasted just over eight years and one month.

20. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among other authorities, the *Vernillo v. France* judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

21. The Government submitted that the facts of the case disproved any assertion that the relevant authorities were responsible for the allegedly excessive length of the proceedings. By "decentralising" the Court of Audit, as a result of the Constitutional Court's judgment, they had acted in accordance with the Court's case-law, in particular the *Buchholz v. Germany* judgment of 6 May 1981 (Series A no. 42).

Lastly, it had to be taken into account that the case was heard by three separate courts, albeit at different levels and with different jurisdictions, and that the applicant did not ask for a date to be fixed for the hearing until 20 November 1985.

22. Like the Delegate of the Commission, the Court notes that the Third Ordinary Division of the Court of Audit in Rome, in which the case was brought on 3 May 1985, waited until 17 October 1988 before sending the file to the Judicial Division of the same court in Palermo (see paragraph 11 above) and that the Palermo Judicial Division waited until 26 October 1992 before fixing the date of the hearing. Moreover, there was a delay of more than three months before the inadmissibility decision was made public by being deposited in the registry.

In addition, the Court notes that, contrary to the Government's assertion, only two divisions of the same court - albeit sitting in two different cities - had to deal with the action brought by Mr Terranova against the Treasury.

With regard to the applicant's conduct, the Court considers that even if he had asked before 20 November 1985 for a date to be fixed for the hearing, the Court of Audit would not have been able to accede to this request, as it had not received his administrative file by then.

23. In conclusion, a period of approximately eight years and one month cannot be considered reasonable, regard being had to the fact that the case was not complex and to what was at stake for the applicant, namely repayment of half of the sum received in compensation. There has therefore been a breach of Article 6 para. 1 (art. 6-1).

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

24. Article 50 (art. 50) of the Convention provides:

"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."

25. Mr Terranova claimed 50,000,000 Italian lire (ITL), a sum which included the retirement bonus, with an adjustment to account for inflation and interest at the statutory rate, compensation for non-pecuniary damage and reimbursement of his expenditure on postage.

26. Like the Delegate of the Commission and the Government, the Court

considers that the applicant has not proved that he sustained any pecuniary damage at all.

Like the Delegate, the Court considers that the applicant did sustain non-pecuniary damage. However, the finding that there has been a breach of the Convention is not in itself sufficient to make good that damage, as the Government submitted. The Court accordingly decides, on an equitable basis, to award the applicant ITL 20,000,000 under this head and to cover his costs.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention;
2. Holds that the respondent State is to pay the applicant, within three months, 20,000,000 (twenty million) Italian lire in respect of non-pecuniary damage and costs;
3. Dismisses the remainder of the claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 4 December 1995.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar