

In the case of *Ausiello 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. Ryssdal, President,
Mr F. Gölcüklü,
Mr C. Russo,
Mr J. De Meyer,
Mr I. Foighel,
Mr L. Wildhaber,
Mr D. Gotchev,
Mr K. Jungwiert,
Mr U. Lohmus,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 21 February and 24 April 1996,

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

Notes by the Registrar

1. The case is numbered 92/1995/598/686. 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 18 October 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. 20331/92) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by an Italian national, Mr Pasquale Ausiello, on 21 February 1992.

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 participate in the proceedings.

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. 4 (b)). On 3 November 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr J. De Meyer, Mr F. Bigi,

Mr L. Wildhaber, Mr D. Gotchev, Mr K. Jungwiert and Mr U. Lohmus (Article 43 in fine of the Convention (art. 43) and Rule 21 para. 5). Subsequently Mr I. Foighel, substitute judge, replaced Mr Bigi, who had died (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, 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 14 January 1996.

5. On 11 January 1996 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. On 25 January 1996 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 27 and 40).

7. On 5 February 1996 the Government filed their observations on the claims for just satisfaction that the applicant had communicated to the Registrar on 9 January 1996 (Article 50 of the Convention (art. 50) and Rule 52 para. 1 read in conjunction with Rule 1 (i)).

AS TO THE FACTS

8. Mr Pasquale Ausiello was formerly a member of the revenue police (Guardia di finanza). He lives in Bologna and is now retired.

9. On 24 November 1989 the bailiff of the Bologna Court of Appeal served at the Ministry of Finance a writ from the applicant instituting proceedings in the Court of Audit in Rome. Mr Ausiello argued that the amount of pension awarded to him two years before had been incorrectly calculated, applied to have the decree fixing that amount set aside and, among other requests, asked for the whole of a period when he had been suspended from his duties to be taken into consideration.

10. On 2 January 1991 the Ministry sent the application to the general command of the revenue police, which communicated it to the Court of Audit on 22 January. The Court of Audit received the applicant's administrative file on 19 October 1991.

11. Pursuant to Law no. 19 of 14 January 1994 ("Law no. 19"), which had given the regional divisions of the Court of Audit jurisdiction over disputes concerning civil and military pensions, the file was sent on a date which has not been specified to the Emilia-Romagna Judicial Division of the Court of Audit, in Bologna.

12. On 17 November 1994 Mr Ausiello lodged a further application in which he asked to be paid the same increases as had been awarded to serving officers of the revenue police under legislation enacted in 1990.

13. On 21 September 1995 the Emilia-Romagna Judicial Division, which had joined the two applications, dismissed them both on the ground that they were without foundation. The text of its decision was deposited in the registry on 17 January 1996.

PROCEEDINGS BEFORE THE COMMISSION

14. Mr Ausiello applied to the Commission on 21 February 1992. 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. 20331/92) admissible on 28 February 1995. In its report of

24 May 1995 (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).

Note by the Registrar

1. For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-III), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

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

16. The applicant complained of the length of the proceedings he had brought in the Court of Audit. He alleged the breach 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 ..."

17. The Government contested this argument, whereas the Commission upheld it.

18. The period to be taken into consideration began on 24 November 1989, when the writ instituting proceedings in the Court of Audit was served at the Ministry of Finance, and ended on 17 January 1996, when the judgment against Mr Ausiello was deposited in the registry.

Contrary to the Government's argument, the period between service of the writ and the date when the application was communicated to the Court of Audit should not be deducted. It is true that Mr Ausiello did not apply to the Court of Audit directly, but that circumstance does not explain the delay of approximately fourteen months before the document in question reached its registry. The period to be considered therefore lasted just under six years and two months.

19. 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, as the most recent authority, the *Terranova v. Italy* judgment of 4 December 1995, Series A no. 337-B, p. 21, para. 20).

20. In the first place, the Government pleaded the complexity of the case. They argued that the allegedly excessive length of the proceedings was due to the fact that in 1994 the applicant had lodged a further application, which was examined together with the first application, and to "uncertainty how the law stood" as regards the jurisdiction of the judicial divisions of the Court of Audit. This uncertainty, it was submitted, had continued in Italy until the entry into force of Law no. 19 (see paragraph 11 above). In addition, the Government laid emphasis on the applicant's inertia, asserting that he had never asked for his case to be dealt with more speedily.

21. The Court notes, firstly, that the case remained dormant from 19 October 1991 to the beginning of 1994 (see paragraphs 10 and 11 above) and that the Government have not produced any valid explanation of this delay, which in itself is already lengthy. Secondly, it notes

that the decision of 21 September 1995 (see paragraph 13 above) merely followed the case-law of the Constitutional Court and the Court of Cassation on the question of military pensions when it dismissed both applications; nothing in the reasons suggests that the questions raised were complex. Moreover, nearly three months elapsed before the judgment was made public on being deposited in the registry.

As regards the applicant's allegedly negligent conduct, the Court merely notes, like the Commission, that in view of the "uncertainty how the law stood" referred to by the Government (see paragraph 20 above), for which Italy bears full responsibility, there is no reason to believe that any steps taken by Mr Ausiello to expedite consideration of his case would have had the desired effect, at least before the entry into force of Law no. 19.

22. There has accordingly been a breach of Article 6 para. 1 (art. 6-1) of the Convention.

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

23. 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."

24. Mr Ausiello claimed just satisfaction for pecuniary and non-pecuniary damage sustained.

25. Like the Government, the Court notes that the applicant has not proved the existence of any pecuniary damage or any causal connection with the alleged violation.

As for non-pecuniary damage, contrary to the Government's argument, the applicant certainly suffered prejudice. However, despite a reminder from the registry, he did not quantify his claims; the conclusion in paragraph 22 of this judgment therefore constitutes sufficient compensation.

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 present judgment in itself constitutes sufficient just satisfaction for the non-pecuniary damage alleged;
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 21 May 1996.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar