

In the case of Torri 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 R. Macdonald,
Mr C. Russo,
Mr J. De Meyer,
Mrs E. Palm,
Mr M.A. Lopes Rocha,
Mr D. Gotchev,
Mr B. Repik,
Mr U. Lohmus,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 22 February and 31 May 1997,

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

Notes by the Registrar

1. The case is numbered 66/1996/685/875. 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 May 1996, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 26433/95) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by an Italian national, Mr Angelo Torri, on 8 September 1993.

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 of the Convention (art. 6-1).

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. 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 10 June 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr J. De Meyer, Mrs E. Palm, Mr M.A. Lopes Rocha,

Mr D. Gotchev, Mr B. Repik and Mr U. Lohmus (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

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 applicant's claims for just satisfaction on 4 October 1996 and the Government's memorial on 16 December 1996.

5. On 13 December 1996 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 19 February 1997. 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,
Mrs M.T. Saragnano, magistrato, on secondment to the Ministry of Justice,	Counsel;

(b) for the Commission

Mr C.L. Rozakis,	Delegate.
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The Court heard addresses by those appearing before it.

At the hearing the Government filed a number of documents.

AS TO THE FACTS

A. The criminal trial

7. On 17 November 1978 the applicant's son died as a result of a road accident. On 9 July 1979 the applicant made a civil party application seeking leave to join criminal proceedings that had been brought in the Rome District Court (Criminal Division) against the person responsible for the accident in order to secure his conviction and obtain damages.

8. In a judgment of 17 November 1982 that was deposited with the registry on 26 November 1982 the accused was sentenced to four months' imprisonment and ordered to pay the applicant damages. In its decision the court stated that the quantum would have to be determined by further proceedings and awarded Mr Torri an interim payment of four million Italian lire.

On 22 March 1985 this sentence was upheld by the Rome Court of Appeal. In a judgment of 4 April 1986, deposited with the registry on 27 September 1986, the Court of Cassation dismissed an appeal on points of law lodged by the convicted defendant.

B. The civil proceedings

9. On 29 March 1991 the applicant brought proceedings against the convicted defendant and his insurance company in the Rome District Court (Civil Division) seeking compensation for pecuniary and non-pecuniary damage.

10. The preparation of the case for trial began on 29 May 1991 and

ended, three hearings later, on 3 March 1993, when the parties filed their final pleadings. The hearing for oral argument before the relevant division was set down for 11 January 1995.

11. In a judgment deposited with the registry on 3 June 1995 the District Court allowed the applicant's claim.

12. On a date that has not been specified the insurance company appealed against the above decision to the Rome Court of Appeal. On 7 July 1996 the case was adjourned until June 1997.

PROCEEDINGS BEFORE THE COMMISSION

13. Mr Torri applied to the Commission on 8 September 1993. He complained of the length of criminal proceedings which he had joined as a civil party followed by proceedings for damages, and relied on Article 6 para. 1 of the Convention (art. 6-1).

14. The Commission (First Chamber) declared the application (no. 26433/95) admissible on 24 October 1995. In its report of 23 January 1996 (Article 31) (art. 31) it expressed the unanimous opinion that there had been a violation of Article 6 (art. 6). 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 1997-IV), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

15. The Government asked the Court, as their principal submission, to declare the application inadmissible in so far as it concerned the criminal proceedings. In the alternative, they asked the Court to hold that there had been no breach of Article 6 para. 1 of the Convention (art. 6-1).

AS TO THE LAW

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

16. Mr Torri complained of the overall length of two consecutive sets of proceedings, namely criminal proceedings which he had joined as a civil party and proceedings for damages he had brought himself. He relied on Article 6 para. 1 of the Convention (art. 6-1), 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. The Government's preliminary objection

17. As they had done before the Commission, the Government objected that the application was out of time in so far as it concerned the length of the first set of proceedings. The Court of Cassation's judgment of 4 April 1986 (see paragraph 8 above) constituted the final decision within the meaning of Article 26 in fine of the Convention (art. 26). The proceedings for damages could not therefore be regarded as a second stage of the proceedings in issue because the six-month time-limit laid down in Article 26 (art. 26) in fine had begun to run when the judgment in question was deposited with the

registry, on 27 September 1986, and the applicant had not observed that time-limit as he had lodged his application on 8 September 1993.

18. The Commission took the view that in order to assess the "reasonableness" of the time taken to hear the case the two sets of proceedings had to be regarded as one, with the second set of proceedings being treated as a prolongation of the first for the purpose of determining the applicant's civil right.

19. The Court reiterates in the first place that if the national law of a State makes provision for proceedings consisting of two stages - the first where the court rules on, *inter alia*, the existence of an entitlement to damages and the second when it fixes the amount - it is reasonable to consider that, for the purposes of Article 6 para. 1 of the Convention (art. 6-1), a civil right is not "determined" until the amount has been decided. The determination of a right entails deciding not only on the existence of that right but also on its scope or the manner in which it may be exercised (see, among other authorities, *mutatis mutandis*, the *Silva Pontes v. Portugal* judgment of 23 March 1994, Series A no. 286-A, p. 13, para. 30), which obviously includes the assessment of damages.

20. In the present case the Rome District Court, when sentencing the defendant in its judgment of 17 November 1982, stated that the quantum of the damages to be paid to Mr Torri would have to be determined by further proceedings (see paragraph 8 above), which obliged him to institute civil proceedings for that purpose.

According to the information supplied to the Court by the applicant, on 7 July 1996 the Rome Court of Appeal adjourned the case until June 1997 (see paragraph 12 above).

When the Rome District Court decided on 3 March 1993 to set down the hearing for oral argument for 11 January 1995 - more than one year and ten months after the filing of final pleadings (see paragraph 10 above) - Mr Torri referred his case, on 8 September 1993, to the Commission.

21. The Court considers that the action for damages is closely linked to the criminal proceedings which the applicant joined as a civil party. It emphasises that at the date of adoption of the present judgment it has received no information about adoption of the final domestic decision for the purposes of Article 26 in fine of the Convention (art. 26).

The objection must accordingly be dismissed.

B. Merits of the complaint

22. It remains to be ascertained whether a reasonable time was exceeded. The Commission answered this question in the affirmative, the Government in the negative.

23. The Court observes that the period to be taken into consideration began on 9 July 1979, when Mr Torri lodged his civil party application, and has not yet ended, since the civil proceedings are still pending following an appeal.

24. 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, most recently, *mutatis mutandis*, the *Zappia v. Italy* judgment of 26 September 1996, Reports of Judgments and Decisions 1996-IV, p. 1412, para. 23).

25. The Government pleaded Mr Torri's conduct, pointing out that he

had waited until March 1991 before bringing the action for damages. They submit that there was a "failure of communication between the applicant and his lawyer" about the fact that notice of the date for the hearing in the Court of Cassation had been served. Without questioning the applicant's good faith, the Government nevertheless submitted that this conduct was dilatory and incompatible with a complaint to the Convention institutions on account of the alleged protraction of the domestic proceedings.

26. The applicant asserted that the period of nearly five years mentioned by the Government was attributable only to the deficiencies of the judicial system, since the registry of the Court of Cassation had omitted to serve him notice of the date for the hearing for oral argument and of the fact that the judgment of 4 April 1986 had been deposited. He had learned of the outcome of the criminal proceedings only from consulting the Court of Cassation's general list.

27. The Delegate of the Commission considered the length of the two sets of proceedings excessive. He expressed the opinion that the applicant's inertia had not played a part in prolonging consideration of the case as such by the criminal and civil courts.

28. The Court notes at the outset that the criminal proceedings lasted just over seven years and two months. Four years and six months then went by before the commencement of the civil action, even though Mr Torri's lawyer, as the documents filed by the Government at the hearing on 19 February 1997 attest, had been served with a copy of the notice of an appeal on points of law (on 19 November 1985) and notified of the date of the hearing for oral argument (on 13 February 1986).

29. In the civil proceedings, which had commenced on 29 March 1991, four years elapsed before the Rome District Court's judgment was deposited with the registry (on 3 June 1995). Moreover, on 7 July 1996 the Court of Appeal adjourned the case until June 1997 (see paragraph 12 above).

In the Court's view these last two periods are too long and in themselves exceed the "reasonable time" required by Article 6 of the Convention (art. 6), without it being necessary to consider the length of the criminal proceedings and the question of the applicant's conduct, especially as there was no particular complexity to the case.

There has therefore been a breach of that provision (art. 6-1).

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

30. Article 50 of the Convention (art. 50) 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."

A. Damage, costs and expenses

31. The applicant claimed 150,000,000 Italian lire (ITL), that sum being intended to cover both pecuniary and non-pecuniary damage and the costs and expenses relating to both sets of proceedings in the Italian courts. He produced evidence that he had paid ITL 15,398,000, covering both the criminal and the civil proceedings, but submitted that he was no longer able to prove all the other expenses he had incurred in view of the length of the period in issue.

32. The Government submitted that if the Court were to find that there had been a breach of the Convention, that decision would constitute sufficient just satisfaction.

33. The Delegate of the Commission considered that the applicant had not established that he had sustained pecuniary damage or that he had had to pay lawyers' fees on account of the length of the domestic proceedings. As regards costs and expenses for the proceedings before the Strasbourg institutions and non-pecuniary damage, he left it to the Court's discretion to fix an amount for the first item and suggested that it award ITL 22,000,000 for the second.

34. The Court agrees with the Delegate on the question of pecuniary damage. For the remainder of the claims, making an assessment on an equitable basis and having regard to all the information in its possession and its case-law on this question, it decides to award Mr Torri ITL 15,000,000 for non-pecuniary damage and ITL 10,000,000 for costs and expenses.

B. Default interest

35. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Dismisses the Government's preliminary objection;
2. Holds that there has been a breach of Article 6 para. 1 of the Convention (art. 6-1);
3. Holds
 - (a) that the respondent State is to pay the applicant, within three months, 15,000,000 (fifteen million) Italian lire for non-pecuniary damage, and 10,000,000 (ten million) lire for costs and expenses;
 - (b) that simple interest at an annual rate of 5% shall be payable from the expiry of the above-mentioned three months until settlement;
4. 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 1 July 1997.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar