



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

SECOND SECTION

CASE OF SOMOGYI v. ITALY

(Application no. 67972/01)

JUDGMENT

STRASBOURG

18 May 2004

FINAL

10/11/2004

In the case of Somogyi v. Italy,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 24 June 2003 and 27 April 2004,

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

PROCEDURE

1. The case originated in an application (no. 67972/01) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr Tamas Somogyi (“the applicant”), on 5 March 2001.

2. The applicant was represented by Mr M. Scaringella, a lawyer practising in Rome. The Italian Government (“the Government”) were represented by their Agent, Mr I.M. Braguglia, and their co-Agent, Mr F. Crisafulli.

3. The applicant alleged that he had been convicted *in absentia* without having had the opportunity to defend himself in the Italian courts.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

6. By a decision of 24 June 2003, the Chamber declared the application admissible.

7. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1). Observations were also received from the Hungarian Government, who had exercised their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)). The respondent Government replied to these comments (Rule 44 § 5).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1951 and is at present detained in Tolmezzo Prison, Udine.

A. The trial of Mr Thamas Somogyi

9. In the course of criminal proceedings concerning an arms trafficking charge, the Rimini preliminary investigations judge set down the preliminary hearing for 23 April 1998.

10. On 30 October 1997 he ordered the notice of the date of the hearing, translated into Hungarian and accompanied by an invitation to appoint a legal representative, to be served by post on the accused, a Hungarian national living in Hungary named Thamas Somogyi, who was born in Miskolc on 23 October 1953. The reply slip acknowledging receipt of the notice reached the Rimini District Court's registry bearing a signature which, according to the applicant, was not his. He asserted that there was a difference between that signature and the one in his passport. Moreover, the forename of the signatory was "Thamas" and not "Tamas".

11. As the defendant did not appear at the preliminary hearing, he was declared to be wilfully seeking to evade trial (*contumace*) and the court appointed a lawyer, Mr G., to assist him. From that point on, all notifications of procedural steps were served on Mr G.

12. Mr G. did not plead the nullity of the notice of the date of the preliminary hearing. An order was then made committing Thamas Somogyi for trial.

13. In a judgment of 22 June 1999, the Rimini District Court sentenced the accused to eight years' imprisonment and a fine of 2,000,000 Italian lire (approximately 1,032 euros).

14. That decision was grounded on statements made by certain persons facing charges in related proceedings, particularly a Mrs M. and the S. brothers, corroborated by other evidence. The text of the judgment did not indicate whether the persons in question had recognised the applicant on a photograph or if they had identified him in their statements purely on the basis of his name or personal information they had about him. The Rimini District Court merely said that the applicant had been "recognised and identified". It further observed that, in view of the gravity of the offences he was charged with and the fact that he had constantly refused to give his version of the facts, he could not be granted the benefit of any extenuating circumstance.

15. The judgment of 22 June 1999 was served on Mr G.

B. The applicant's arrest and the remedies he pursued

16. On 30 October 1999 the Rimini District Court, having noted that the judgment of 22 June 1999 had become final, ordered the arrest of Mr Thamas Somogyi.

17. On 15 August 2000 the Austrian police arrested the applicant (Tamas Somogyi, born in Budapest on 19 October 1951) and notified the Italian authorities.

18. The Italian authorities opened an investigation which led to the finding that the person convicted on 22 June 1999 was in fact the applicant.

19. In a decision of 17 August 2000, the Rimini District Court ordered that the judgment of 22 June 1999 be rectified by insertion of the applicant's forename and his date and place of birth in place of the information originally recorded. That decision was served on Mr G.

20. The applicant was then extradited from Austria to Italy, where he was deprived of his liberty in execution of the judgment of 22 June 1999.

21. On a date which has not been specified he applied to the Rimini District Court under Article 175 of the Code of Criminal Procedure ("the CCP"), asking it to reopen the time allowed for an appeal (*istanza di rimessione in termini*). He contended that the judgment of 22 June 1999 was invalid because the summons was null and void, submitting the following arguments:

(a) the identity of the person convicted had not been reliably established, so that the procedure for rectification of an error ought not to have been followed;

(b) he had not been aware of the proceedings against him, and the signature on the envelope containing the notice of the date of the preliminary hearing was not his. In that connection he said that if necessary a handwriting expert should be asked to determine whether the signature was authentic and that if he had to do so he would lodge a complaint alleging forgery (*querela di falso*);

(c) the notice concerned had not been properly served since the form of service did not comply with the provisions of the Italo-Hungarian agreement signed on 26 May 1977 (and ratified by the Italian parliament in Law no. 511 of 23 July 1980), which required all judicial communications from one of the two signatory countries addressed to individuals in the other country to take the form of a request for judicial assistance. The applicant further asserted that the form of service of the notice in question had in any case been incompatible with the relevant provisions of the Hungarian legislation concerning judicial communications by post.

22. In a decision of 24 October 2000, the Rimini District Court refused the applicant's request.

23. It observed in the first place that the judge responsible for the execution of sentences could not look into grounds for annulment arising

out of the proceedings and concerning the merits of the charges. The defects complained of had in any case been cured (*sanate*) when the judgment of 22 June 1999 became final.

24. Secondly, the identity of the person convicted had been established through an investigation conducted by the Rimini prefecture with the assistance of the Rome branch of Interpol. Moreover, a mere inaccuracy concerning a defendant's date of birth did not constitute a ground for annulment of a judgment, and could properly be corrected via the rectification procedure.

25. Lastly, according to the case-law of the Court of Cassation, a request to reopen the time allowed for an appeal was admissible only where a defendant alleged that he had been prevented from finding out about his conviction by circumstances beyond his control. It would be inadmissible, however, if he pleaded that service of a notice was null and void. In such a case a person convicted at first instance could lodge an appeal out of time, arguing in effect that the time allowed for an appeal had not begun to run.

26. On 27 November 2000 the applicant appealed to the Bologna Court of Appeal against the judgment of 22 June 1999, submitting that as it had been based on invalid procedural steps it could not have become final. He also repeated his request for a report by a handwriting expert and his statement concerning the possibility of lodging a complaint of forgery.

27. In a judgment of 24 May 2001, deposited with the registry on 3 July 2001, the Bologna Court of Appeal declared the applicant's appeal inadmissible. It observed in particular that the evidence against the applicant had been corroborated by two persons charged in related proceedings, who had stated that the weapons in question, which had been brought in from Hungary and then used to commit an armed robbery, a murder and an attempted murder, had been bought at the applicant's house. He had then taken to Hungary a Fiat Uno car which one of the co-defendants had sold him. The District Court had correctly identified the defendant as Tamas Somogyi, a Hungarian national living at 16 Erdo Street, Szigethalom, previously convicted of rape, armed robbery and acts of vandalism. Moreover, on 27 January 1995, Italian Interpol had reported that the applicant was the son of a woman named Maria Jobbik (as his lawyer had confirmed), that he had been born on 19 October 1951 in Budapest and that he lived at "26 ... Erdo Str., Szigethalom/Hungary". His address had also been confirmed by a co-defendant. In those circumstances, the Court of Appeal ruled that there was no doubt that the applicant was indeed the person sought by the Italian authorities.

28. The Court of Appeal went on to note that notification of the charges had been served on the applicant. An acknowledgment-of-receipt slip dated 16 January 1998 and apparently signed by the addressee proved that this information had been received. The address at which the notice had been served was in most respects correct, the only mistakes being that an extra

“h” had been added to “Szigethalom” (making “Szigethalhom”) and the accent had been missed off the place name Ęrdo (making Erdo). It was therefore not necessary to compare the applicant's signatures on his passport and certain company documents with the one on the return slip acknowledging receipt.

29. As regards the applicant's argument that the terms of the Italo-Hungarian agreement had not been complied with, the Court of Appeal observed that notification had been properly served on the applicant in accordance with the relevant domestic provisions, since the assistance between States provided for in the agreement was mandatory only if one of the High Contracting Parties requested it. Where, as in the present case, no explicit request to that effect had been made, domestic law had to be applied. In addition, although it was true that under Hungarian legislation registered letters could be delivered only to persons who had first been authorised and designated, it was obvious that those rules applied only where, unlike the position in the applicant's case, the person receiving the letter was not the addressee.

30. The Court of Appeal therefore ruled that, contrary to the applicant's submissions, the first-instance judgment was valid. It followed that the defendant's appeal was out of time, and therefore inadmissible pursuant to Article 591 § 1 (c) of the CCP.

31. On 30 July 2001 the applicant appealed on points of law. He repeated his request for a report by a handwriting expert and again stated that he was minded to lodge a complaint of forgery.

32. In a judgment of 23 April 2002, deposited with the registry on 23 May 2002, the Court of Cassation dismissed the applicant's appeal, holding that the reasons given by the Court of Appeal for all its disputed rulings had been logical and correct. It observed in particular that, in spite of minor clerical errors in the address, the notice sent by the Rimini preliminary investigations judge had obviously reached the person it had been sent to. There was no evidence that it had been received by someone of the same name as the applicant living at a similar or nearly identical address.

33. On 11 December 2001 the applicant asked for a retrial, alleging that certain new information showed that he should have been acquitted. It was submitted that a Hungarian journalist and writer, Mr P., had informed the applicant's lawyer that during a television programme two co-defendants had made statements establishing his client's innocence. In addition, Mr P. had asserted that in his opinion the Italian and Hungarian secret services had intervened in the applicant's case and that a Colonel K., employed in the Organised Crime Unit, knew that the convicted man was innocent.

34. In a decision of 18 July 2002, the Ancona Court of Appeal declared the application inadmissible. It pointed out that, according to the case-law of the Court of Cassation, statements by co-defendants did not justify

reopening a trial. Moreover, the evidence of the persons concerned had already been taken by the lower courts. Furthermore, the opinions expressed by Mr P. about the applicant's innocence were completely subjective and unsubstantiated by any evidence.

C. The evidence identifying the applicant as the person convicted by the Rimini District Court

35. According to the information supplied by the Government, identification of the applicant as an arms trafficker was based on the following evidence:

- the record of an interview with Mrs M. on 20 January 1995 during which she declared that a Tamas Somogyi wished to participate in the criminal activities of the S. brothers and that he had supplied guns to them;
- a handwritten note from Mrs M. giving the applicant's name and address;
- a letter sent by one of the S. brothers to Mrs M. – and received by her – at the applicant's address;
- a receipt for 20,000 German marks, given by Mr Somogyi to Mrs M.;
- a television interview obtained by an Italian journalist on 16 February 1995 at the applicant's home, during which the applicant showed photographs of Mrs M. and one of the S. brothers;
- the fact that Mrs M. had recognised the applicant's face in the video recording of the interview; and
- the fact that the applicant's identity had been checked by the Italian and Austrian police at the time of his extradition, on the basis of a photograph taken from the interview broadcast on 16 February 1995.

II. RELEVANT DOMESTIC LAW

A. Requests for the reopening of the time allowed for appeal

36. The relevant passages of Article 175 §§ 2 and 3 of the Code of Criminal Procedure (“the CCP”) provide:

“In the event of conviction *in absentia* ..., the defendant may request the reopening of the time allowed for appeal against the judgment where he can establish that he had no knowledge [of it] ... without any negligence on his part or where, in the case of a conviction *in absentia* having been served ... on his lawyer ..., he can establish that he did not deliberately refuse to take cognisance of the procedural steps.

A request for the reopening of the time allowed for appeal must be lodged within ten days of the date ... on which the defendant learned [of the judgment], failing which it shall be declared inadmissible.”

B. The procedure for rectification of an error

37. Article 130 of the CCP provides:

“Rectification of judgments and decisions affected by errors or omissions which do not entail their nullity, and which may be corrected without requiring a substantial redrafting of the text, shall be ordered, where necessary of his or her own motion, by the judge who gave the decision in question ...”

38. Article 546 of the CCP indicates what elements a judgment must include. Sub-paragraph (b) mentions, among other details, the defendant's particulars or other information by which he can be identified. Article 547 of the CCP provides that, where one of the elements mentioned in Article 546 is missing or incomplete, the judgment must be rectified in accordance with Article 130, and that an order to that effect may be made by the judge even of his or her own motion.

39. Article 552 § 1 of the CCP also provides that a summons must include the applicant's particulars or other information by which he can be identified. Paragraph 2 adds that the decision in question is null and void if the defendant has not been reliably identified.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

40. The applicant submitted that the criminal proceedings against him had not been fair. He relied on Article 6 of the Convention, which provides:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

A. The parties' submissions

1. The applicant

41. The applicant alleged that he had been convicted in his absence without having the opportunity to defend himself before the Italian courts. He had not received any information about the opening of proceedings against him, since the notice of the date of the preliminary hearing had never been served on him. In that connection, he submitted that the signature on the reply slip acknowledging receipt of the letter from the Rimini preliminary investigations judge was not his.

42. The applicant pointed out that the Rimini District Court had incorrectly indicated his forename, surname, place of birth and address, and asserted that this had created a situation of uncertainty about his identity and prevented him from exercising his right to defend himself. On that point, he referred to the differences in spelling he had drawn to the attention of the Italian courts.

43. In addition, as there was a reasonable doubt about the authenticity of the signature on the reply slip acknowledging receipt of the letter from the Rimini preliminary investigations judge, the Italian courts should have ordered a report from a handwriting expert in order to be able to verify whether the defendant had been informed of the charges. Be that as it may, service of the notice concerned had not been effected in accordance with the procedure provided for in the Italo-Hungarian agreement of 1977, which was mandatory for all notifications between the signatory States; it should therefore be considered null and void. Moreover, even supposing that the Italian authorities' decision to serve the notice by post could be accepted, there had in any event been a failure to comply with the rules laid down in Hungarian legislation, which required the identity of the person receiving delivery of a registered letter to be precisely recorded, with reference to an identity document.

44. The applicant further complained of the decision of 17 August 2000, alleging that the rectification procedure was not applicable in his case, since

a number of pieces of evidence identifying the convicted person were inconsistent with the particulars of the person arrested.

45. The applicant also pointed out that all the appeals he had been able to make once he had been extradited to Italy had been dismissed as being out of time. The presence of a court-appointed lawyer during the proceedings in the Rimini District Court had not ensured a fair trial since the right to due process implied among other rights the possibility of choosing one's own lawyer and of discussing with him the line of defence that should be followed. That situation had been aggravated by the fact that the District Court had imposed a particularly harsh penalty after taking an unfavourable view of the fact that the accused had failed to appear at his trial.

46. In one of his memorials, the applicant observed that he had never claimed to be the victim of mistaken identity. However, that assertion seems to be contradicted by certain passages in his later observations.

2. The Government

47. The Government rejected the applicant's arguments, observing that he had had the benefit of all the safeguards provided by the Italian legal system, regard being had in particular to the numerous appeals against his conviction which he had been able to lodge through his lawyer. They also pointed out that in the Rimini District Court the applicant was declared to be wilfully seeking to evade trial and was assisted by a lawyer appointed by the court, who had taken part in the trial and called for his client to be acquitted.

48. The Government further observed that some of the applicant's assertions were contradictory. In particular he had said on the one hand that he was not the person found guilty by the Rimini District Court, but on the other that he had not been informed of the proceedings against him. If the first of those assertions was correct, then no question arose about the fairness of the proceedings against the other person, the only point to be settled being the lawfulness or otherwise of the applicant's arrest, he then being compelled to serve a sentence imposed on another man.

49. However, the Government submitted that the applicant's first assertion was manifestly without foundation, since there was an abundance of precise evidence which proved beyond a reasonable doubt that he was the person who had committed the offences.

50. Moreover, throughout the proceedings before the Court, the applicant had oscillated between asserting that he was not the person prosecuted and convicted by the Rimini District Court and admitting that he was indeed that person but complaining only that he had not been served with any notification. The reason for that ambiguity was that at both domestic and European levels he was hoping to be found innocent and to avoid serving the sentence imposed on him. However, a decision on that point would be outside the Court's jurisdiction.

51. The Government pointed to a difference between the applicant's argument that the Italo-Hungarian agreement of 1977 should have been applied and the Hungarian Government's submission that the applicable treaty in the present case was the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. However, the Italian authorities had not applied either of those treaties, and had merely served the summons by post, in accordance with Italian legislation. In the Government's submission, that procedure had been perfectly legitimate and not in any way unlawful. They noted, on that point, that the Bologna Court of Appeal and the Court of Cassation had rejected all the applicant's allegations, observing among other findings that, where there was no request to that effect from one of the High Contracting Parties, application of the Italo-Hungarian agreement of 1977 was not mandatory, each State being free to serve notices in the ordinary way. Moreover, the obligation under Hungarian legislation to indicate the name of the recipient of a registered letter precisely, with reference to an identity document, was applicable only where, unlike the situation in the present case, the letter was received by a person other than the addressee.

52. In response to the submissions of the third-party intervener, the Government observed that the principle of national sovereignty precluded only the performance in foreign territory of acts implying the exercise of public authority and "jurisdiction", such as an arrest, an interrogation or a search. It was an entirely different matter as regards service of a document or writ having no consequence in the legal order of the State of residence of the addressee. Moreover, service had not taken place in foreign territory, but in Italian territory, from where the letter had been sent. Furthermore, the notice given by the Government of Hungary by virtue of Article 15 of the European Convention on Mutual Assistance in Criminal Matters did not apply to the service of a writ. Lastly, that Convention, correctly construed, permitted the parties to seek the assistance of another State when serving a writ but did not impose any obligation to do so, the national authorities always remaining free to choose, if they wished, the ordinary method of service.

53. In any event, the question of the applicability of the treaties relied on by the applicant and the third-party intervener was of little importance in the respondent Government's submission, the essential point to be determined in the present case being whether the notice of the date of the hearing had reached the applicant and whether the statutory presumption of his knowledge of it had been sufficiently well-founded to justify refusing to reopen the time allowed for an appeal.

54. In that connection the Government observed that the Bologna Court of Appeal had excluded the existence of legitimate doubts about the applicant's identity, which was established – if certain minor typographical mistakes in the spelling of his name were disregarded – by his place of

residence and the name of his mother. As regards the authenticity of the signature on the return slip acknowledging receipt of the communication from the Rimini preliminary investigations judge, the Government said they were not in a position to look into the matter. They also argued that the Court itself was not a trial court required to conduct an investigation to ascertain whether a signature had been forged.

55. Considering that they should stick to the facts as set out in the file, the Government noted that the notice of the date of the hearing had been placed into the recipient's hands at an address corresponding to that noted by Mrs M., and at which she had received a letter from one of the S. brothers. Moreover, that address differed only slightly from the address indicated by the applicant in his application to the Court. In any case, the address and the applicant's name were correct, if not in the original, at least in the Hungarian translation of the notice. In addition, either the post office had been capable of understanding the error (which, the Government submitted, had been minimal), or it should have returned the letter to its sender. It flew in the face of common sense to think that the Hungarian postal service could have delivered the communication from the Rimini preliminary investigations judge to someone other than the applicant – but with a name astonishingly like his – at an address which, according to the applicant himself, did not exist. The Government contended that the applicant's submissions were a tissue of not very ingenious and rather confused fabrications which he had based on a real fact (the spelling mistakes in the address) in order to get out of a very tight spot.

56. The Government further noted that in 1995 the applicant had been interviewed by an Italian journalist. The latter had probably said something to justify his visit, thus revealing the existence of suspicions and pending judicial proceedings. Although such information could not replace service of the notice of the date of the hearing, it was difficult to believe that the applicant, in spite of the very serious situation he was to find himself in, took no interest whatsoever in the case. Among other steps, he could have asked a lawyer to follow the progress of the Italian proceedings. Moreover, in view of the considerable media interest in the case, the Hungarian press must have spoken of the difficulties in which a Hungarian national now found himself, and that undermined the applicant's assertions that he had never heard anything about the criminal proceedings against him. Equally, it was more than surprising that the person who received the letter addressed to the applicant had not taken the trouble to get in touch with the Italian authorities.

57. The Government argued on that basis that the applicant had found out in time about the proceedings against him and had therefore had the opportunity to participate in his trial and to be represented there by a lawyer of his choice, which opportunity he had waived voluntarily.

58. Lastly, the Government accepted that national authorities were required to exercise close scrutiny to ensure that there could be no serious doubt about the fairness of criminal proceedings. However, that obligation did not go so far as to impose a reopening of the proceedings or the completion of long and difficult enquiries where, as in the present case, the convicted person's allegations were implausible and he had not troubled to lodge a complaint of forgery but had merely said that he was minded to do so.

3. The third-party intervener

59. The Hungarian Government observed that the principle of sovereignty implied that a State could not carry out judicial acts outside its territory, in respect of the citizens of another State, save on the basis of bilateral or multilateral treaties, or in the case of reciprocity. But judicial cooperation between Hungary and Italy had been governed by the European Convention on Mutual Assistance in Criminal Matters since 11 October 1993, when Hungary acceded to that convention. Pursuant to Article 26 § 1, the convention had superseded all former treaties, conventions and bilateral agreements between any two Contracting Parties. It followed that at the time when notice was served on the applicant the Italo-Hungarian agreement could no longer be applied.

60. By virtue of Article 15 of the European Convention on Mutual Assistance in Criminal Matters, the Hungarian Government had given notice that any request for judicial assistance was to be sent to the Ministry of Justice, so that any other form of communication was excluded. The Ministry was then required to serve any writ sent by the Italian authorities in accordance with the rules laid down by Hungarian law. As the Italian authorities had not sent any request to the Hungarian Ministry of Justice, the notice had not been served on the applicant in accordance with the legal requirements.

B. The Court's assessment

1. Scope of the case

61. The Court observes at the outset that the parties dealt at length with the question whether the notice of the date of the hearing could be served on the applicant by post, in accordance with the relevant provisions of Italian legislation, or whether the authorities of the respondent State should have made use of the procedures provided for in the Italo-Hungarian agreement of 1977 or the European Convention on Mutual Assistance in Criminal Matters. According to the Italian Government, application of those two treaties in the instant case was optional, whereas in the submission of the

applicant and the third-party intervener it was mandatory. The applicant also contested the legitimacy of using the procedure for rectification of an error to cure mistakes in the way his particulars were recorded in the judgment by which he was convicted.

62. However, the Court does not consider it necessary to examine those questions. It observes that it is competent to apply only the European Convention on Human Rights, and that it is not its task to interpret or review compliance with other international conventions as such (see *Di Giovine v. Portugal* (dec.), no. 39912/98, 31 August 1999, and *Hermida Paz v. Spain* (dec.), no. 4160/02, 28 January 2003; see also *Di Lazzaro v. Italy*, no. 31924/96, Commission decision of 10 July 1997, Decisions and Reports 90-B, p. 134 at p. 139). Moreover, it is not the Court's function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

63. It should also be pointed out that, in his first communications with the Court, the applicant complained essentially that he had been the victim of mistaken identity. He alleged in particular that he was not the person convicted by the Rimini District Court on the basis of the evidence of his co-defendants, and that he had been arrested instead of the true culprit. However, in one of his memorials he changed his position, accepting in substance that he was the person identified by the witnesses. Although certain assertions in later letters were capable of evoking the applicant's initial position once more, the Court considers that it is not required to rule on the question whether the person convicted was correctly identified, an issue which the Italian judicial authorities determined through the exercise of their uncontested right to assess the evidence submitted to them.

64. It will therefore confine its attention to the question whether, as a whole, the criminal proceedings against the applicant were fair (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 711, § 50), and whether his conviction *in absentia* infringed the principles enshrined in Article 6 of the Convention.

2. Merits of the case

65. The Court observes that, although this is not expressly mentioned in paragraph 1 of Article 6, the object and purpose of the Article taken as a whole show that a person "charged with a criminal offence" is entitled to take part in the hearing. Moreover, sub-paragraphs (c), (d) and (e) of paragraph 3 guarantee to "everyone charged with a criminal offence" the right "to defend himself in person", "to examine or have examined witnesses" and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court", and it is difficult to see

how he could exercise these rights without being present (see *Colozza v. Italy*, judgment of 12 February 1985, Series A no. 89, p. 14, § 27; *T. v. Italy*, judgment of 12 October 1992, Series A no. 245-C, p. 41, § 26; *F.C.B. v. Italy*, judgment of 28 August 1991, Series A no. 208-B, p. 21, § 33; see also *Belziuk v. Poland*, judgment of 25 March 1998, *Reports* 1998-II, p. 570, § 37).

66. Although proceedings conducted in the absence of the defendant are not in themselves incompatible with Article 6 of the Convention, a denial of justice will nevertheless occur where a person convicted *in absentia* is unable subsequently to obtain from a court which has heard him a fresh determination of the merits of the charge, in respect of both law and fact, where it has not been unequivocally established that he has waived his right to appear and to defend himself (see *Colozza*, cited above, p. 15, § 29, and *Einhorn v. France* (dec.), no. 71555/01, § 33, ECHR 2001-XI).

67. The Convention leaves Contracting States wide discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of Article 6, while at the same time preserving their effectiveness. However, the Court's task is to determine whether the result called for by the Convention has been achieved. In particular, the resources available under domestic law must be shown to be effective where a person charged with a criminal offence has neither waived his right to appear and to defend himself nor sought to escape trial (see *Medenica v. Switzerland*, no. 20491/92, § 55, ECHR 2001-VI).

68. In the present case the Italian authorities took the view, in substance, that the applicant had waived his right to appear at his trial because, although he had been informed by registered letter of the charges against him and the date of the preliminary hearing, he had not taken the trouble to report to the Rimini preliminary investigations judge or appoint legal counsel. The applicant contested that version of the facts, asserting that he had never received the registered letter in question because the address on it was incorrect.

69. The circumstances surrounding the delivery of the notice of 30 October 1997 from the Rimini preliminary investigations judge remain uncertain. The material submitted to the Court is not such as to allow it to determine whether the applicant received the letter.

70. For the purposes of the present case, the Court will merely observe that the applicant repeatedly challenged the authenticity of the signature attributed to him, which was the only evidence capable of proving that the defendant had been informed that proceedings had been instituted against him. It could not be considered that the applicant's allegations were *prima facie* without foundation, particularly in view of the difference between the signatures he produced and the one on the return slip acknowledging receipt and the difference between the applicant's forename (Tamas) and that of the person who signed the slip (Thamas). In addition, the mistakes in the

address were such as to raise serious doubts about the place to which the letter had been delivered.

71. In response to the applicant's allegations, the Italian authorities dismissed all the applicant's attempts to seek a domestic remedy and refused to reopen the proceedings or the time allowed for an appeal, without examining the question which, in the Court's view, lay at the heart of the case, namely the identity of the person who had signed the return slip. In particular, no investigation was ordered to look into the disputed facts and, despite the applicant's repeated requests, there was no comparison of the signatures by means of expert handwriting analysis.

72. The Court considers that, in view of the prominent place held in a democratic society by the right to a fair trial (see, among many other authorities, *Delcourt v. Belgium*, judgment of 17 January 1970, Series A no. 11, pp. 14-15, § 25 *in fine*), Article 6 of the Convention imposes on every national court an obligation to check whether the defendant has had the opportunity to apprise himself of the proceedings against him where, as in the instant case, this is disputed on a ground that does not immediately appear to be manifestly devoid of merit (see, *mutatis mutandis*, as regards the obligation to check whether a court was "impartial", *Remli v. France*, judgment of 23 April 1996, *Reports* 1996-II, p. 574, §§ 47-48). That principle is moreover accepted in substance by the Government (see paragraph 58 above).

73. In the instant case, however, the Bologna Court of Appeal and the Court of Cassation did not make any such check, thereby depriving the applicant of the possibility of remedying, if that should prove necessary, a situation contrary to the requirements of the Convention. Thus there was no close scrutiny to determine whether, beyond a reasonable doubt, the convicted man had unequivocally waived the right to appear at his trial.

74. It follows that in the instant case the means employed by the national authorities did not achieve the result required by Article 6 of the Convention.

75. Lastly, as regards the Government's assertion that the applicant had in any event learned of the proceedings through a journalist who had interviewed him or from the local press, the Court points out that to inform someone of a prosecution brought against him is a legal act of such importance that it must be carried out in accordance with procedural and substantive requirements capable of guaranteeing the effective exercise of the accused's rights, as is moreover clear from Article 6 § 3 (a) of the Convention; vague and informal knowledge cannot suffice (see *T. v. Italy*, cited above, p. 42, § 28).

76. There has therefore been a violation of Article 6 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

78. In respect of pecuniary damage the applicant claimed 102,270 euros (EUR), which sum was calculated on the basis of EUR 35 for each day of deprivation of liberty he had already endured or would have to endure before his sentence was served. He alleged that before his arrest he had made his living buying and selling cars and had owned a company. He had had to cease trading when he was imprisoned and he was now making no profit.

79. With regard to non-pecuniary damage, the applicant asserted that he had been implicated in one of the most horrible crimes of the century, and that had had a devastating effect on his social relations and his mental and physical health. He claimed EUR 300,000 under this head.

80. The Government noted that the applicant had not proved that there was a causal link between the violation of the Convention and the prejudice he alleged. In particular, he had not adduced any evidence capable of establishing the turnover of his business or his annual income; moreover, he had not proved that his business had had to cease trading on account of his absence. As regards non-pecuniary damage, the finding of a violation would constitute in itself sufficient just satisfaction.

81. The Court observes that it is empowered to award just satisfaction under Article 41 where the alleged loss or damage was caused by the violation found, but that the State is not required to pay for heads of damage which cannot be imputed to it (see *Perote Pellon v. Spain*, no. 45238/99, § 57, 25 July 2002).

82. In the present case, the Court has found a violation of Article 6 § 1 of the Convention in so far as the Italian authorities did not take the necessary steps to verify that the applicant's right to participate in his trial had been respected. That finding does not necessarily mean that his conviction was ill-founded.

83. The Court does not consider it appropriate to compensate the applicant for the alleged losses, no causal link having been established between the violation found and the negative effects the applicant's conviction allegedly had on his commercial activities and his social relations.

84. In so far as the applicant claimed just satisfaction on account of his detention, the Court observes that it has not found the deprivation of liberty in question to have been in breach of the Convention. Consequently, no just satisfaction can be awarded under that head.

85. As regards non-pecuniary damage, the Court considers that, in the circumstances of the case, the finding of a violation constitutes in itself sufficient just satisfaction (see *Brozicek v. Italy*, judgment of 19 December 1989, Series A no. 167, p. 20, § 48; *F.C.B. v. Italy*, cited above, p. 22, § 38; and *T. v. Italy*, cited above, p. 43, § 32).

86. The Court refers to its settled case-law to the effect that in the event of a violation of Article 6 § 1 of the Convention the applicant should, in so far as possible, be put in the position that he would have been in had the requirements of that provision not been disregarded (see *Piersack v. Belgium* (Article 50), judgment of 26 October 1984, Series A no. 85, p. 16, § 12). The Court considers that, where it finds that an applicant has been convicted despite a potential infringement of his right to participate in his trial, the most appropriate form of redress would, in principle, be trial *de novo* or the reopening of the proceedings, in due course and in accordance with the requirements of Article 6 of the Convention (see, *mutatis mutandis*, and in connection with a trial court's lack of independence and impartiality, *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003, and *Tahir Duran v. Turkey*, no. 40997/98, § 23, 29 January 2004).

B. Costs and expenses

87. The applicant requested reimbursement of the costs and expenses incurred to remedy the violation of the Convention, in the sum of EUR 9,523.62.

88. The Government left the matter to the Court's discretion, while emphasising that the only expenses which could be reimbursed were those necessarily and reasonably incurred to assert rights guaranteed by the Convention.

89. The Court notes that before applying to the Court the applicant exhausted the remedies available to him in Italian law, pleading before the competent courts the unlawfulness of the method by which the notice of the date of the hearing had been served. The Court therefore accepts that he incurred expenses in seeking redress for the violation of the Convention both through the domestic legal system and at European level (see, *mutatis mutandis*, *Rojas Morales v. Italy*, no. 39676/98, § 42, 16 November 2000). However, in aggregate, it finds the costs claimed excessive. It accordingly considers that only part of the costs incurred by the applicant before it and before the Italian courts should be reimbursed (see, *mutatis mutandis*, *Sakkopoulos v. Greece*, no. 61828/00, § 59, 15 January 2004). Having

regard to the material in its possession and its practice in the matter, it considers it reasonable to award him the overall sum of EUR 4,500.

C. Default interest

90. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 of the Convention;
2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,500 (four thousand five hundred euros) for costs and expenses, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 18 May 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President