



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

COURT (PLENARY)

CASE OF PRETTO AND OTHERS v. ITALY

(Application no. 7984/77)

JUDGMENT

STRASBOURG

8 December 1983

In the case of Pretto and others,

The European Court of Human Rights, taking its decision in plenary session in pursuance of Rule 48 of the Rules of Court* and composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. R. RYSSDAL,
Mr. J. CREMONA,
Mr. Thór VILHJÁLMSSON,
Mr. W. GANSHOF VAN DER MEERSCH,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. L. LIESCH,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. J. PINHEIRO FARINHA,
Mr. L.-E. PETTITI,
Mr. B. WALSH,
Mr. C. RUSSO,
Mr. R. BERNHARDT,
Mr. J. GERSING,

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

Having deliberated in private on 24 March and on 25 October 1983,

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

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission"). The case originated in an application (no. 7984/77) against the Italian Republic lodged with the Commission in 1977 under Article 25 (art. 25) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by six Italian citizens, namely Mr. Rodolfo Pretto, his wife Cesira Possia, his son Palmerino Pretto, his daughter-in-law Rita Zordan and his grandsons Andrea and Rodolfo Pretto.

2. The Commission's request was lodged with the registry of the Court on 17 May 1982, within the period of three months laid down by Articles 32 § 1 and 47 (art. 32-1, art. 47). It referred to Articles 44 and 48 (art. 44, art.

* Note by the registry: In the version of the Rules applicable when proceedings were instituted. A revised version of the Rules entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date.

48) and to the declaration whereby the Italian Republic recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The request sought a decision from the Court as to the existence of violations of Article 6 § 1 (art. 6-1).

3. The Chamber of seven judges to be constituted included, as ex officio members, Mr. C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 § 3 (b) of the Rules of Court). On 28 May 1982, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. J. Cremona, Mrs. D. Bindschedler-Robert, Mr. F. Matscher, Mr. R. Macdonald and Mr. R. Bernhardt (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

4. Mr. Wiarda, who had assumed the office of President of the Chamber (Rule 21 § 5), ascertained, through the Registrar, the views of the Agent of the Government of the Italian Republic ("the Government") and the Delegates of the Commission regarding the procedure to be followed. On 9 June, he decided that the Agent should have until 30 September 1982 to file a memorial and that the Delegates should be entitled to reply in writing within two months from the date of the transmission of the Government's memorial to them by the Registrar.

5. On 29 June 1982, the Chamber decided under Rule 48 to relinquish jurisdiction forthwith in favour of the plenary Court.

6. By telex received on 4 October 1982, the Government informed the Registrar that they had decided not to file a memorial but to refer to the arguments previously set out in their observations to the Commission. On 9 November 1982, the Registrar, acting on the President's instructions, requested the Commission to produce a copy of those observations; its Secretary supplied this copy on 15 November.

7. After consulting, through the Registrar, the Agent of the Government and the Delegates of the Commission, the President directed on 1 December 1982 that the oral proceedings should open on 22 March 1983.

8. The hearings were held in public at the Human Rights Building, Strasbourg, on the said day. Immediately before they opened, the Court had held a preparatory meeting; it had authorised the Agent of the Government to use the Italian language (Rule 27 § 2).

There appeared before the Court:

- for the Government:

Mr. A. SQUILLANTE, Section President

at the Consiglio di Stato, Head of the Diplomatic Legal

Service at the Ministry of Foreign Affairs, *Agent*,

Mr. V. LIBRANDO, Judge

at the Court of Cassation, Ministry of Justice, *Counsel*;

- for the Commission:

Mr. S. TRECHSEL,

Mr. A. WEITZEL,

Delegates.

The Court heard addresses by Mr. Squillante for the Government and by Mr. Trechsel and Mr. Weitzel for the Commission, as well as their replies to its questions. However, the Agent of the Government was not in a position to supply on the spot one of the items of information requested (see paragraph 13 below); he was also unable to do so subsequently, as he informed the Registrar by letters of 29 April and 15 July 1983.

AS TO THE FACTS

9. Mr. Rodolfo Pretto, an Italian citizen, for more than forty years farmed, with the help of members of his family, land at Villaganzerla Castegnaro (Vicenza) of which he was the tenant.

In 1971, the owner entered into a preliminary contract with a certain Mr. S. for the sale of the property at a price of 27 million Lire. In accordance with section 8 of the Agricultural Land Development Act (Act no. 590 of 26 May 1965 - "Disposizioni per lo sviluppo della proprietà coltivatrice"), he informed Mr. Pretto of the conclusion of this contract.

Mr. Pretto gave notice of his intention to exercise the right of pre-emption ("diritto di prelazione") conferred on him by the same Act. Nevertheless, by deed dated 9 June 1971, the owner sold the land to the brother-in-law of Mr. S. for the price that had been agreed with the latter.

10. On 24 September 1971, Mr. Pretto brought an action before the Vicenza Regional Court seeking the re-sale of the land to him by the new owner (azione di riscatto). He complained of the failure to respect his right of pre-emption and alleged that the price indicated in the contract was fictitious: according to the Agricultural Inspector's valuation, the land was in fact only worth about 12 million Lire. The applicant stated that he was willing to offer the new owner the price actually paid or, alternatively, the price shown in the sale contract or, in the further alternative, such price as the Regional Court might determine.

The defendant pleaded that the action was inadmissible since Mr. Pretto had not made an unconditional offer of the price mentioned in the contract. He also claimed that the plaintiff could in any event no longer avail himself of his right of pre-emption as he had not paid the said amount within the three-month period laid down by section 8 of Act no. 590.

11. The Regional Court gave judgment on 21 March 1973. It held that Mr. Pretto was entitled to have the land re-sold to him at the price specified in the contract, such price to be paid not later than one month and twenty-one days from the date on which the judgment became final.

12. On 7 July 1973, the new owner appealed to the Venice Court of Appeal which, after postponing the hearings three times at the request of

both parties, reversed the Regional Court's decision by a judgment of 8 October 1974, which was deposited in the Court of Appeal's registry on 12 December. The Venice Court found that although Mr. Pretto's action had been admissible, he was estopped from availing himself of his right to obtain a re-sale since he had not paid the price stated in the sale contract within three months of the commencement of the proceedings at first instance. It held that this time-limit had to apply, by analogy with the rules on the exercise of the right of pre-emption (section 8 of Act no. 590).

13. On 12 February 1975, Mr. Pretto appealed on points of law to the Court of Cassation. The respondent lodged a cross-appeal (*ricorso incidentale*) on 26 March 1975 and the applicant filed a reply thereto (*controricorso al ricorso incidentale*) on 3 May 1975.

On a date which it has not been possible to trace (see paragraph 8 in fine above), the President of the 3rd Civil Chamber of the Court of Cassation directed that the hearings be held on 18 February 1976. The applicants claimed that previously Mr. Pretto had twice asked for the case to be dealt with, but that for reasons beyond their control they were unable to prove this.

On 12 February, Mr. Pretto filed a supplementary memorial; under Article 378 of the Code of Civil Procedure, he was permitted to do so up to the fifth day before the hearings.

On 18 February, the 3rd Civil Chamber postponed the hearings: as section 8 of Act no. 590 had given rise to conflicting judicial decisions, it considered it preferable to await the ruling of the plenary Court of Cassation on other appeals bearing on the same point.

The plenary Court was to have sat on the following day, but in fact did not give judgment until 10 June 1976. On 19 October, the 3rd Civil Chamber applied that decision and dismissed Mr. Pretto's appeal; it confirmed the Venice Court of Appeal's interpretation of section 8 of Act no. 590. The full text of the judgment was made public by being deposited in the Court of Cassation's registry on 5 February 1977. Article 133 of the Code of Civil Procedure, which save for some rare exceptions applies to all civil court judgments, whether rendered at first instance, on appeal or on cassation, in fact provides (translation from the Italian):

"The judgment (*sentenza*) shall be made public by being deposited in the registry of the court which delivered it. The Registrar shall record at the bottom of the judgment that it has been deposited, adding the date and his signature; within the next five days, he shall advise the parties (*parti che si sono costituite*) of the deposit by means of a written notice which shall contain the operative provisions of the judgment."

Under Article 120 of Royal Decree no. 1368 of 18 December 1941 (rules on the application of the Code of Civil Procedure and transitional provisions), the deposit has to be effected within thirty days of the examination of the case.

14. On 24 June 1977, the judgment was served on Mr. Pretto by the respondent and thereupon became enforceable.

15. Anyone can consult or obtain copies of the judgments of the Court of Cassation on application to its registry. If judgments contain features that are novel from the point of view of interpretation of the law, they may be published.

PROCEEDINGS BEFORE THE COMMISSION

16. In their application lodged with the Commission on 27 July 1977 (no. 7984/77), Mr. Pretto and the other members of his family relied on Article 6 § 1 (art. 6-1) of the Convention and made the following complaints:

(a) In the present case the 3rd Civil Chamber of the Court of Cassation had not constituted an independent and impartial tribunal since it had followed an opinion expressed by the plenary Court of Cassation in a judgment which was in the process of being published; moreover, the very existence of the plenary Court was contrary to this provision of the Convention.

(b) The said Chamber had violated the rights of the defence by basing its decision on a judgment which had not yet been published and could not have been known to the applicant's lawyer.

(c) The principle of equality of arms had been infringed, since the public prosecutor's office attached to the Court of Cassation had assisted that Court in its private deliberations (Article 380 of the Code of Civil Procedure, as in force at the time).

(d) The Court of Appeal had violated the right to a fair trial by denying Mr. Pretto the right to seek a judicial determination of the exact price he had to pay in order to exercise validly his right to obtain a re-sale.

(e) By not pronouncing their judgments publicly, the Court of Appeal and the Court of Cassation had failed to satisfy a further requirement of Article 6 § 1 (art. 6-1).

(f) Finally, the length of the proceedings had exceeded a "reasonable time".

17. On 11 July 1979, the Commission declared the application admissible as regards the final complaint and also part of the penultimate complaint (proceedings before the Court of Cassation only). It declared the remainder of the application inadmissible; in particular, in so far as Mr. Pretto complained of the lack of public pronouncement of the Venice Court of Appeal's judgment, it found that he had failed to exhaust domestic remedies.

In its report of 14 December 1981 (Article 31 of the Convention) (art. 31), the Commission expressed the opinion:

- by eight votes to seven, that the length of the proceedings in question had not exceeded a "reasonable time";
- by twelve votes to three, that there had also been no breach of Article 6 § 1 (art. 6-1) as regards the requirement that judgment be pronounced publicly.

FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

18. At the hearings on 22 March 1983, the Government requested the Court "to conclude that Italy has not violated Article 6 § 1 (art. 6-1) of the Convention in the present case".

AS TO THE LAW

19. The applicants complained of the fact that the judgment of 19 October 1976 by the Court of Cassation had not been pronounced publicly (see paragraph 13 above); they further objected to the length of the proceedings. They relied on Article 6 § 1 (art. 6-1) of the Convention, which reads:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal 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."

The Government contended, on the contrary, that the absence of public pronouncement of the judgment did not contravene the Convention and that the "reasonable time" had not been exceeded. The majority of the Commission was of the same opinion, whereas three of its members agreed with the applicants on the first point and seven on the second.

I. ABSENCE OF PUBLIC PRONOUNCEMENT

20. With regard to the first of the two breaches alleged, the cassation proceedings alone are in issue: the applicants raised no objection as to absence of public pronouncement in relation to the Vicenza Regional Court's judgment and their complaint that the Venice Court of Appeal's

judgment was not pronounced publicly was declared inadmissible by the Commission on the ground of failure to exhaust domestic remedies (see paragraphs 16 and 17 above).

21. The public character of proceedings before the judicial bodies referred to in Article 6 § 1 (art. 6-1) protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1 (art. 6-1), namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see the Golder judgment of 21 February 1975, Series A no. 18, p. 18, § 36, and also the Lawless judgment of 14 November 1960, Series A no. 1, p. 13).

22. Whilst the member States of the Council of Europe all subscribe to this principle of publicity, their legislative systems and judicial practice reveal some diversity as to its scope and manner of implementation, as regards both the holding of hearings and the "pronouncement" of judgments. The formal aspect of the matter is, however, of secondary importance as compared with the purpose underlying the publicity required by Article 6 § 1 (art. 6-1). The prominent place held in a democratic society by the right to a fair trial impels the Court, for the purposes of the review which it has to undertake in this area, to examine the realities of the procedure in question (see notably, *mutatis mutandis*, the Adolf judgment of 26 March 1982, Series A no. 49, p. 15, § 30).

23. The applicability of Article 6 (art. 6) to the present facts was not disputed and, moreover, is to be inferred from the established case-law of the Court (see notably the Delcourt judgment of 17 January 1970, Series A no. 11, pp. 13-15, §§ 24-26, and the Pakelli judgment of 25 April 1983, Series A no. 64, p. 14, § 29). The manner of application of this text depends, however, on the particular circumstances of the case (*ibid.*).

24. In accordance with Article 133 of the Code of Civil Procedure, the judgment adopted on 19 October 1976 by the Court of Cassation was simply deposited in the court registry, with written notification of the operative provisions being given to the parties, but not pronounced in open court (see paragraph 13 above). It therefore has to be determined whether, as the applicants and a minority of the Commission contended, this state of affairs violated the Convention.

25. The terms used in the second sentence of Article 6 § 1 (art. 6-1) - "judgment shall be pronounced publicly", "le jugement sera rendu publiquement" - might suggest that a reading out aloud of the judgment is required. Admittedly the French text employs the participle "rendu" (given), whereas the corresponding word in the English version is "pronounced" (*prononcé*), but this slight difference is not sufficient to dispel the impression left by the language of the provision in question: in French,

"rendu publiquement" - as opposed to "rendu public" (made public) - can very well be regarded as the equivalent of "prononcé publiquement".

At first sight, Article 6 § 1 (art. 6-1) of the European Convention would thus appear to be stricter in this respect than Article 14 § 1 of the 1966 International Covenant on Civil and Political Rights, which provides that the judgment "shall be made public", "sera public".

26. However, many member States of the Council of Europe have a long-standing tradition of recourse to other means, besides reading out aloud, for making public the decisions of all or some of their courts, and especially of their courts of cassation, for example deposit in a registry accessible to the public. The authors of the Convention cannot have overlooked that fact, even if concern to take it into account is not so easily identifiable in their working documents as in the travaux préparatoires of the 1966 Covenant (see, for instance, document A/4299 of 3 December 1959, pp. 12, 15 and 19, §§ 38 (b), 53 and 63 (c) in fine).

The Court therefore does not feel bound to adopt a literal interpretation. It considers that in each case the form of publicity to be given to the "judgment" under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1 (art. 6-1).

27. In order to determine whether the manner in which the Court of Cassation delivered its judgment of 19 October 1976 met the requirements of Article 6 § 1 (art. 6-1), account must be taken of the entirety of the proceedings conducted in the Italian legal order and of the Court of Cassation's role therein.

That role was confined to reviewing in law the decision of the Venice Court of Appeal. The Court of Cassation could not itself determine the suit, but only, on this occasion, dismiss the applicant's appeal or, alternatively, quash the previous judgment and refer the case back to the trial court. After holding public hearings, the Court of Cassation adopted the former course. The Venice Court of Appeal's judgment thus became final; its consequences for Mr. Pretto were in no way changed.

The latter judgment, for its part, had been made public by being deposited on 12 December 1974 in the court registry. The applicant alleged that in this respect also there had been a violation of the Convention, but the Commission declared the complaint inadmissible on the ground of failure to exhaust domestic remedies. The Court therefore does not have jurisdiction to decide whether, in the case of the Venice Court, such a deposit is in conformity with the requirements of Article 6 (art. 6). An affirmative reply to this question would also be valid for the Court of Cassation's judgment, whereas the same could not be said of a possible negative reply: on the contrary, even in the latter eventuality, the deposit of the judgment in the registry of the Court of Cassation would satisfy the requirements of Article

6 (art. 6), having regard to the differences between the respective roles of the two courts.

Furthermore, the Court of Cassation took its decision after holding public hearings and, although the judgment dismissing the appeal on points of law was not delivered in open court, anyone may consult or obtain a copy of it on application to the court registry (see paragraph 15 above).

In the opinion of the Court, the object pursued by Article 6 § 1 (art. 6-1) in this context - namely, to ensure scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial - is, at any rate as regards cassation proceedings, no less achieved by a deposit in the court registry, making the full text of the judgment available to everyone, than by a reading in open court of a decision dismissing an appeal or quashing a previous judgment, such reading sometimes being limited to the operative provisions.

28. The absence of public pronouncement of the Court of Cassation's judgment therefore did not contravene the Convention in the present case.

II. COMPLIANCE WITH THE REASONABLE-TIME REQUIREMENT

29. The applicants also complained of the length of the proceedings instituted by Mr. Rodolfo Pretto before the Italian courts.

The Government contended on the other hand that the "reasonable time" referred to in Article 6 § 1 (art. 6-1) had not been exceeded. The Commission agreed in substance with this contention.

1. Length of the proceedings

30. The relevant period did not begin to run as from the institution of proceedings before the Vicenza Regional Court on 24 September 1971 (see paragraph 10 above), but only as from 1 August 1973, when the recognition by Italy of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after 31 July 1973, account must be taken of the then state of proceedings (see the Foti and others judgment of 10 December 1982, Series A no. 56, p. 18, § 53).

The closing date, for its part, was 5 February 1977, the day when the judgment of 19 October 1976 was deposited in the registry of the Court of Cassation (see paragraph 13 above).

To sum up, the period to be taken into consideration runs from 1 August 1973 until 5 February 1977, that is three years, six months and five days.

2. Reasonableness of the length of the proceedings

31. The reasonableness of the length of proceedings has to be assessed in each instance according to the particular circumstances and having regard to the criteria enunciated in the Court's case-law (see, as the most recent

authority, the Zimmermann and Steiner judgment of 13 July 1983, Series no. 66, p. 11, § 24).

(a) Complexity of the case

32. The Commission and the Government both considered that the facts were undisputed but that they raised a rather complex problem of legal interpretation.

The Court is of the same view: what was involved was the application of a relatively recent statute which did not contain any specific provisions on the legal point in issue, namely whether the conditions to be satisfied in order to exercise the right of pre-emption also applied to the right to obtain a re-sale; in addition, the decided authorities - still scarce at that time - disclosed contradictory approaches. It was thus reasonable that, with a view to eliminating this divergence of approach and to ensuring certainty of the law, the 3rd Civil Chamber of the Court of Cassation should have deferred its decision until judgment was given by the plenary Court, even though there was a possibility that this would lead to a prolongation of the proceedings (see paragraph 13 above).

(b) Conduct of Mr. Pretto

33. The Commission referred to its case-law to the effect that the exercise of the right to a hearing within a reasonable time is subject, in civil cases, to diligence being shown by the party concerned. In its opinion, there was no evidence that the applicant had failed to act with due diligence.

The Government disagreed. They pointed out that during the appeal proceedings the parties' lawyers, including Mr. Pretto's, had on three occasions requested that the hearings be postponed; that they had always lodged the various documents in the case just when the prescribed time-limits were on the point of expiring; that Mr. Pretto, for example, had filed a supplementary memorial barely six days before the hearings due to be held on 18 February 1976 (see paragraph 13 above); and finally that under Italian law the institution and conduct of civil litigation are matters left to the initiative of the parties, without any intervention on the part of the court.

34. Before the Commission, the applicants claimed that Mr. Rodolfo Pretto had twice asked for the appeals on points of law to be dealt with (see paragraph 13 above), but that for reasons beyond their control they were unable to prove this.

The Court sees no cause to doubt their statement, which was not contested by the Government. It also notes that Mr. Pretto was entitled to make full use of the time-limits available under Italian law and that he was never out of time.

Although no blame can be attached to him, the applicant was nevertheless responsible to a certain degree for the prolongation of the proceedings (see the Eckle judgment of 15 July 1982, Series A no. 51, p. 36,

§ 82). In this respect, he cannot level any reproach against the respondent State.

(c) Conduct of the judicial authorities

35. The manner in which the judicial authorities conducted the case is to be assessed by reference to five successive stages:

(a) from 1 August 1973 (entry into effect of Italy's recognition of the right of individual petition) to 12 December 1974 (deposit of the Venice Court of Appeal's judgment in its registry);

(b) from 12 February 1975 (filing of Mr. Pretto's appeal on points of law) to 3 May 1975 (lodging of his reply to the respondent's cross-appeal);

(c) from 3 May 1975 to 18 February 1976 (hearing devoted to an examination of the appeals, and decision by the 3rd Civil Chamber to defer judgment);

(d) from 18 February to 19 October 1976 (adoption of the judgment);

(e) from 19 October 1976 to 5 February 1977 (deposit of the judgment in the Court of Cassation's registry).

The period from 12 December 1974 to 12 February 1975 does not fall to be taken into account since it corresponds to the time-limit available to the parties for appealing on points of law.

36. The majority of the Commission considered that the different phases in the proceedings had been characterised by delays which could probably have been avoided, but that the overall duration could not be regarded as incompatible with Article 6 § 1 (art. 6-1). For the minority, on the other hand, the intervals between the adoption of the Venice Court of Appeal's and the Court of Cassation's judgments and their deposit in the court registry (8 October 1974 - 12 December 1974, 19 October 1976 - 5 February 1977) and between the lodging of the applicant's reply to the cross-appeal and the first hearing (3 May 1975 - 18 February 1976) were not consonant with the "reasonable time" requirement.

According to the Government, the length of the proceedings had not been shown to be inordinate and was in any event the result of the complexity of the case, the conduct of the parties, the procedural complications at the cassation stage (filing of a cross-appeal and of a reply thereto, see paragraph 13 above) and the expediency, as far as the 3rd Civil Chamber was concerned, of deferring judgment until the plenary Court of Cassation had given its ruling on a similar case. The Government added that account should not be taken of the time-limits available to the parties for lodging cross-appeals and replies thereto, that is to say the period from 12 February to 3 May 1975.

37. The Court is of the same view as the Government on the last point. As regards the four other phases (see paragraph 35 above), it does not find their duration to be unreasonable. Admittedly, the hearings before the Court of Cassation could have taken place earlier: although it is not known exactly

when their date was fixed (see paragraph 13 above), it can be assumed that the case was ready for hearing as from 3 May 1975, once the appeals and the reply had been filed. In addition, and even according to Italian law (Article 120 of the Royal Decree of 18 December 1941, see paragraph 13 above), there should not have been so long an interval between the adoption of the Venice Court of Appeal's and the Court of Cassation's judgments and their deposit in the court registry (8 October - 12 December 1974 and 19 October 1976 - 5 February 1977, respectively). Nevertheless, although these various delays could probably have been avoided, they are not sufficiently serious to warrant the conclusion that the total duration of the proceedings was excessive. The permissible limit was therefore not overstepped.

FOR THESE REASONS, THE COURT

1. Holds unanimously that the absence of public pronouncement of the Court of Cassation's judgment did not contravene Article 6 § 1 (art. 6-1);
2. Holds by fourteen votes to one that there has also been no breach of Article 6 § 1 (art. 6-1) as regards compliance with the "reasonable time" requirement.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, this eighth day of December, one thousand nine hundred and eighty-three.

Gérard WIARDA
President

Marc-André EISSEN
Registrar

The following separate opinions are annexed to the present judgment, in accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 50 § 2 of the Rules of Court :

- concurring opinion of Mr. Ganshof van der Meersch;

- dissenting opinion of Mr. Pinheiro Farinha.

G. W.
M.-A. E.

CONCURRING OPINION OF MR. GANSHOF VAN DER
MEERSCH

(Translation)

I am of the opinion, like my distinguished colleagues, that the absence of public pronouncement of the Italian Court of Cassation's judgment did not contravene Article 6 § 1 (art. 6-1) of the Convention in the present case; however, I cannot agree with one of the reasons on which our Court has based its decision.

I regret that paragraph 27 of the judgment refers, in order to justify the absence of violation, to the fact that the role of the Court of Cassation "was confined to reviewing in law the decision of the Venice Court of Appeal".

Apparently this is not just an obiter dictum, and this impression is reinforced by the fact that in paragraph 26 the Court also cites in support of its decision the example, to be found in several member States of the Council of Europe, of the procedure consisting of the deposit of the judgment in a registry accessible to the public, such procedure being utilised "especially [in] their courts of cassation".

DISSENTING OPINION OF MR. PINHEIRO FARINHA

(Translation)

1. To my great regret I am unable to share the conclusion of the majority of the Court to the effect that the "reasonable time" referred to in Article 6 § 1 (art. 6-1) of the Convention was not exceeded.

2. Like the majority, I am of the opinion that "the relevant period did not begin to run as from the institution of proceedings before the Vicenza Regional Court on 24 September 1971" - and I emphasise the date -, "but only as from 1 August 1973, when the recognition by Italy of the right of individual petition took effect", and that "in assessing the reasonableness of the time that elapsed after 31 July 1973, account must be taken of the then state of proceedings".

3. I also agree with paragraph 31, where it is stated that "the reasonableness of the length of proceedings has to be assessed in each instance according to the particular circumstances and having regard to the criteria enunciated in the Court's case-law"; this being so, I will now turn to an examination of the specific case.

4. Complexity of the case

The facts were undisputed.

Although the case raised a complex problem of legal interpretation, account must be taken of the fact that the Act which fell to be interpreted (Act no. 590) dated back to 26 May 1965; more than ten years had elapsed between that date and the time when the Court of Cassation was called upon to interpret the Act in the present case. Accordingly, I conclude that the case was not complex, since ten years appear to me to be more than sufficient for an examination of the Act, however complex it may have been.

5. Conduct of Mr. Pretto

I agree with the opinion of the majority to the effect that "Mr. Pretto was entitled to make full use of the time-limits available under Italian law and ... was never out of time".

Mr. Pretto's conduct cannot be criticised; in my view, he was in no way responsible for the prolongation of the proceedings.

6. Conduct of the judicial authorities

It does not seem to me reasonable that the Venice Court of Appeal's judgment, which was adopted on 8 October 1974, should have been deposited in that Court's registry on 12 December: this meant that two months elapsed before it was made public.

Although the case was ready for hearing as from 3 May 1975, the Court of Cassation directed that the hearings be held on 18 February 1976.

On the latter date, the Court of Cassation postponed the hearings in order to await the plenary Court's ruling on appeals on points of law that raised the same issue. The reason for the postponement was not any legal

obligation to await the plenary Court's decision but the fact that the Civil Chamber of the Court of Cassation considered it proper. The plenary Court did not give judgment until 10 June 1976. There is no justification for this delay; in view of the fact that the case had already been pending for several years, Article 6 § 1 (art. 6-1) of the Convention, to the extent that it secures the right to have proceedings conducted within a reasonable time, required that Mr. Pretto's appeal on points of law be examined immediately.

The appeal was only examined on 19 October 1976 (although the judgment adopted by the plenary Court of Cassation had not yet been made public) and the resulting judgment was made public, by being deposited in the Court of Cassation's registry, on 5 February 1977; there is no justification for this delay either.

7. I conclude that the duration of the proceedings exceeded the "reasonable time". I am therefore of the opinion that there was a violation of Article 6 § 1 (art. 6-1) of the Convention.