

In the Baggetta case*,

* Note by the Registrar: The case is numbered 13/1986/111/159. The second figure indicate the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

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 the Rules of Court, as a Chamber composed of the following judges:

Mr. R. Ryssdal, President,
Mr. J. Cremona,
Mrs. D. Bindschedler-Robert,
Mr. F. Matscher,
Mr. L.-E. Pettiti,
Mr. C. Russo,
Mr. J. Gersing,

and also of Mr. M.-A. Eissen, Registrar, and Mr. H. Petzold, Deputy Registrar,

Having deliberated in private on 31 January and 19 May 1987,

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

PROCEDURE

1. The present case was brought before the Court by the European Commission of Human Rights ("the Commission") on 13 March 1986, within the three-month period laid down in Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 10256/83) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by Mr. Giuseppe Baggetta, who is an Italian national, on 25 January 1983.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the Italian declaration recognising the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision from the Court as to whether or not the facts of the case disclosed a breach by the respondent State of one of its obligations under Article 6 § 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings pending before the Court and designated the lawyer who would represent him (Rule 30).

3. On 17 March 1986, the President of the Court decided that one and the same Chamber of seven judges should consider the Capuano, Baggetta and Milasi cases (Rule 21 § 6). The Chamber included, as ex officio members, 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 § 3 (b)). On 19 March 1986, the President of the Court drew by lot, in the presence of the Registrar, the names of the other five members, namely Mr. J. Cremona, Mrs. D. Bindschedler-Robert, Mr. F. Matscher,

Mr. L.-E. Pettiti and Mr. J. Gersing (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

4. Mr. Ryssdal assumed the office of President of the Chamber (Rule 21 § 5). Having consulted, through the Registrar, the Agent of the Italian Government ("the Government"), the Commission's Delegate and the applicant's lawyer, he decided on 2 April that there was no need for memorials to be filed at this stage (Rule 37 § 1).

Nevertheless, between 21 April and 10 September 1986, the Registrar received the applicant's claims for just satisfaction and observations on the matter from the Government and the Commission's Delegate. On the President's instructions he also requested the Commission to produce a number of documents; these were supplied on 24 April and 23 May 1986.

On 4 April 1986, the President gave the applicant leave to use the Italian language (Rule 27 § 3).

5. On 28 November 1986, after consulting, through the Registrar, the Agent of the Government, the Commission's Delegate and the applicant's lawyer, the President directed that the oral proceedings should open on 26 January 1987 (Rule 38).

6. The hearings were held in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr. L. Ferrari Bravo, Head of the Diplomatic Legal Service of the Ministry of Foreign Affairs,	Agent,
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Mr. D. Striani, avvocato,

Mr. G. Grasso, avvocato,

Mrs. L. Bianchi, magistrato,	Counsel;
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- for the Commission

Mr. A. Weitzel,	Delegate;
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- for the applicant

Mr. C. Corigliano, avvocato,

Mr. R.G. Milasi, avvocato,	Counsel.
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The Court heard addresses by Mr. Ferrari Bravo, Mr. Striani and Mr. Grasso for the Government, by Mr. Weitzel for the Commission and by Mr. Corigliano and Mr. Milasi for the applicant, as well as their replies to its questions.

On the day of the hearings, the Government and the applicant filed with the registry a number of documents requested by the Court. Further documents were forwarded by them on 23 and 30 March 1987 respectively.

AS TO THE FACTS

7. Mr. Giuseppe Baggetta, who was born in 1955, lives in Reggio Calabria.

On 27 November 1971, he was arrested at Cosenza with eight other people after the sacking of a political club on the same day. The public prosecutor's office began an investigation, and the applicant was released on 28 January 1972. On 9 January 1973, the investigating judge at Cosenza committed him and his co-defendants for trial at the District Court of the same town on charges of possession of dangerous weapons (porto in luogo pubblico di congegni micidiali), criminal damage and arson (danneggiamento seguito da incendio) and - a lesser offence - unlawful possession of clubs and knuckledusters (porto abusivo di bastoni e noccoliere).

8. The trial was set down for 26 September 1978, but had to be postponed as two of Mr. Baggetta's co-defendants were not well enough to attend. The hearings scheduled for 26 February 1979 and 31 March 1980 were also postponed, because one of the defendants had not been notified of the date of the first hearing and two had not been notified of the date of the second one. The trial took place on 22 November 1982. In its judgment given on the same day and filed with the registry on 7 December, the District Court sentenced Mr. Baggetta in absentia to one year, eight months' imprisonment (reclusione), suspended, and a fine (multa) of 250,000 lire for the first offence; and it ruled that the second offence was covered by an amnesty and the lesser offence was time-barred.

9. On 19 January 1983, the applicant lodged an appeal, claiming that he had not been tried within a reasonable time as envisaged in Article 6 (art. 6) of the Convention and that the proceedings were a nullity. He also stated that he was born not in 1951, as the decision at first instance had indicated, but in 1955.

The file reached the Catanzaro Court of Appeal on 16 June 1983. On 5 October, that court notified the defendants of the date of the hearing - 19 January 1984. At the end of the hearing the Court of Appeal held that the charge against Mr. Baggetta of possession of dangerous weapons could not be proceeded with, as the court was granting him a "judicial pardon" (perdono giudiziale) as a minor. The judgment was filed with the registry on 30 January 1984.

10. The applicant appealed on a point of law to the Court of Cassation, which held on 19 December 1986 that the criminal proceedings were time-barred. This judgment was filed with the registry on 17 February 1987.

11. Two other sets of criminal proceedings were taken against Mr. Baggetta.

12. The first of these was instituted in Rome in 1974 and concerned sixty-one people charged with having organised a political movement which had undemocratic aims or, as was Mr. Baggetta's case, with having taken part in the movement's activities.

In September 1974, the Rome public prosecutor's office sent the applicant a "judicial notification" (comunicazione giudiziaria) and on 21 November 1975 issued a warrant for his arrest, which was executed on 25 November.

On 5 June 1976, the Rome District Court found Mr. Baggetta not guilty, and accordingly discharged him. He was released the same day.

On 13 March 1981, the Rome Court of Appeal ruled that the prosecution's appeal was inadmissible as far as Mr. Baggetta was concerned, as the ground of appeal in his case had not been argued in sufficient detail. The judgment was filed with the registry on 27 April, and no further action was taken in the applicant's case.

13. The other prosecution was brought in Reggio Calabria in respect of events in Reggio between October 1969 and May 1973, which

were set out in a police report of 17 May 1973.

On 9 January 1980, the investigating judge committed Mr. Baggetta and thirty-four co-defendants for trial. On 31 March, the presiding judge of the District Court summoned them to appear on 23 April 1980.

On 7 March 1983, the District Court ruled that Mr. Baggetta could not be prosecuted, because he had already been tried in Rome for the same offences (see paragraph 12 above). The judgment was filed with the registry on 6 April 1983.

14. The criminal proceedings had repercussions on the applicant's endeavours to find a job.

On 16 September 1974, Mr. Baggetta had been informed by the Head of Personnel in the Milan regional directorate of Italian Railways that he had passed a competition for skilled posts and that he should submit within thirty days a number of supporting documents, including a copy of his police record. As this showed that proceedings were being taken against him, he was not allowed to take up his new duties until the proceedings were concluded.

On 10 February 1983, the Head of Personnel confirmed that the appointment remained suspended pending the outcome of the proceedings in Cosenza and Reggio Calabria: the "good conduct" requirement for access to a public-service post could not be regarded as having been satisfied until the courts had given final decisions.

On 11 April 1983, the applicant informed Italian Railways that the Reggio proceedings were over (see paragraph 13 above) and that the prosecutor had not appealed against the decision of the Cosenza District Court (see paragraph 9 above), so that any heavier sentence was precluded. He therefore asked to be appointed immediately.

On 19 April 1983, Italian Railways replied that they had to await the end of the proceedings in the Catanzaro Court of Appeal, and that the fact that it was not legally possible to increase the sentence passed at first instance was of no importance. They also intimated that they would have to obtain a copy of the Rome District Court's decision of 5 June 1976 (see paragraph 12 above).

15. On 19 February 1985, as Law no. 732 of 29 October 1984 had abolished the good-conduct requirement, Mr. Baggetta renewed his request.

On 28 March 1985, Italian Railways replied that the aforementioned Law did not apply to competitions held before it had come into force, and that the decision of the Court of Cassation therefore had to be awaited.

In January 1987, Italian Railways acknowledged that the applicant fulfilled the good-conduct condition and they asked him to undergo a medical examination in order to check that he was fit to perform his duties.

PROCEEDINGS BEFORE THE COMMISSION

16. Mr. Baggetta applied to the Commission on 25 January 1983 (application no. 10256/83). He complained of the slowness of the proceedings in the Catanzaro Court of Appeal, of unjustified pre-trial detention in connection with the prosecutions in Cosenza and Rome and of loss of prospect of a job on account of the proceedings pending at Catanzaro.

17. On 6 October 1983, the Commission declared the second and third complaints inadmissible, but on 9 July 1984 declared the first complaint admissible.

In its report of 4 December 1985 (made under Article 31 of the Convention) (art. 31), it expressed the unanimous opinion that the "reasonable time" envisaged in Article 6 § 1 (art. 6-1) had been exceeded. The full text of the Commission's opinion is reproduced as an annex to this judgment.

AS TO THE LAW

I. APPLICATION FOR THE CASE TO BE STRUCK OUT OF THE LIST

18. At the hearing the Government asked the Court to strike the case out of the list under Rule 48 § 2 of the Rules of Court, which provides:

"When the Chamber is informed of a friendly settlement, arrangement or other fact of a kind to provide a solution of the matter, it may, after consulting, if necessary, the Parties, the Delegates of the Commission and the applicant, strike the case out of the list."

The Government contended that the applicant could no longer claim to be a victim of a violation of the Convention owing to two events that had occurred after the case was referred to the Court, namely the Court of Cassation's judgment of 19 December 1986 holding that the prosecution was time-barred (see paragraph 10 above) and the decision to recruit Mr. Baggetta to a post on the railways, subject to a medical examination (see paragraph 15 above).

According to the Commission's Delegate, on the other hand, the applicant nonetheless remained a victim in respect of past events, especially as the Italian Court of Cassation's ruling that the criminal proceedings were time-barred was not designed to compensate for the length of the proceedings.

The Court notes that in the instant case there has been neither a friendly settlement nor an arrangement; it too considers that the two new facts brought to its notice are not of a kind to provide a solution of the matter and that a decision must accordingly be taken on the merits (see, *inter alia* and *mutatis mutandis*, the Guzzardi judgment of 6 November 1980, Series A no. 39, pp. 30-31, § 85).

II. THE MERITS

A. Alleged violation of Article 6 § 1 (art. 6-1) of the Convention

19. According to the applicant, the hearing of his case had taken longer than the "reasonable time" envisaged in Article 6 § 1 (art. 6-1) of the Convention, which provides:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The Government contested this allegation, whereas the Commission accepted it in substance.

1. Period to be considered

20. There was no dispute as to the period to be considered. It began not on 27 November 1971, when Mr. Baggetta was arrested (see paragraph 7 above), but only on 1 August 1973, when the Italian declaration recognising the right of individual petition took effect. In order to determine the reasonableness of the length of time which elapsed after that date, regard must be had, however, to the state of the case at that moment (see the Foti and Others judgment of 10 December 1982, Series A no. 56, p. 18, § 53).

The period ended on 19 December 1986, the day on which the Court of Cassation's judgment was given (see paragraph 10 above).

In sum, the period to be considered amounts to more than thirteen years and four months.

2. Reasonableness of the length of the proceedings

21. The reasonableness of the length of proceedings has to be assessed according to the circumstances of the case and having regard to the criteria laid down in the Court's case-law (see, amongst other authorities, the above-mentioned Foti and Others judgment, Series A no. 56, p. 19, § 56).

22. Neither the complexity of the case nor the applicant's attitude calls for any particular comment; nor did those appearing before the Court deal with these aspects of the matter.

The same does not apply to the conduct of the relevant authorities.

According to the Commission, the final decision on the charge against the applicant had taken so long that it fell to the respondent State to come forward with an explanation. The explanation it gave in the instant case, however, was not, in the Commission's view, such as to demonstrate that the requirement of hearing within a "reasonable time" had been complied with. In particular, the crisis situation which the respondent State pleaded in its defence and which was due to the excessive workload of the courts could scarcely be regarded as temporary. Moreover, the respondent State had not taken prompt action to remedy it.

Quoting statistics in support of their contentions, the Government disputed the Commission's opinion. The measures they had taken between 1978 and 1985 had, they claimed, been swift and sufficient; besides, it was bound to take "some time" for them to have any effect (see the Buchholz judgment of 6 May 1981, Series A no. 42, p. 21, § 61). The Government also pointed to the speed with which the appeal proceedings had been conducted (see paragraph 9 above) and stated, contrary to what the Commission maintained, that the crisis situation at the Cosenza District Court lasted for less than nine years.

23. The Court agrees with the Commission. It points out first of all that the Convention places the Contracting States under a duty to organise their legal systems so as to enable the courts to comply with the requirements of Article 6 § 1 (art. 6-1), including that of trial within a "reasonable time"; nonetheless, a temporary backlog of business does not involve liability on the part of the Contracting States provided that they take, with the requisite promptness, remedial action to deal with an exceptional situation of this kind (see, for example, the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 12, § 29).

24. In the instant case it might be asked whether such a situation did not arise from the political troubles the region was experiencing at the time (see the above-mentioned Foti and Others judgment, Series A no. 56, pp. 20-21, § 61). However that may be, the situation does not justify the time which elapsed - more than nine years - before the judgment of 22 November 1982; the period to be considered was much longer than in other cases referred to by the Government, which, besides, did not relate to a "criminal charge" (see the above-mentioned Buchholz judgment, Series A no. 42; the above-mentioned Zimmermann and Steiner judgment, Series A no. 66; and the Guincho judgment of 10 July 1984, Series A no. 81).

At all events, the respondent State's endeavours to improve the working conditions of the Calabria courts began only in 1978, roughly seven years after the institution of the proceedings against the

applicant, who had been waiting for his case to be set down for trial since 9 January 1973, when the judicial investigation was concluded (see paragraph 7 above). Furthermore, despite the expeditiousness of the Court of Appeal, the proceedings did not end until December 1986.

25. In the light of all the circumstances of the case, the Court concludes that the applicant was not tried within a "reasonable time" and that there was accordingly a violation of Article 6 § 1 (art. 6-1).

B. Application of Article 50 (art. 50)

26. Article 50 (art. 50) of the Convention reads as follows:

"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."

At the hearing, the applicant's representative reiterated in substance the claims for just satisfaction that had been submitted in writing (see paragraph 4 above): it was alleged that Mr. Baggetta had suffered substantial material loss and had sustained irreparable non-pecuniary damage.

27. The applicant sought in the first place employment on the railways with retrospective effect to 16 October 1974 or, subject to certain conditions, in the Reggio Calabria Prefecture.

According to the Government, the Court did not have jurisdiction to order that they should take a specific measure of this kind.

The Commission expressed no view on this matter.

The Court notes that Mr. Baggetta never lost his right to be employed on the railways: his taking up his duties was merely postponed pending the outcome of the various criminal proceedings against him. And the Government stated that the Court of Cassation's 1986 judgment removed the final obstacle to his recruitment. In these circumstances, the Court does not find it necessary to rule on the Government's plea of inadmissibility on this point.

28. The applicant also claimed two hundred million lire as "fair compensation for damage and prejudice sustained" and, in addition, reimbursement of his costs and expenses of unspecified amount; his claim related to each of the proceedings opened against him, in Rome and Reggio Calabria as well as Cosenza.

The Government argued that these claims were unfounded or, at least, unreasonable and disproportionate. The Commission's Delegate considered, on the other hand, that the postponement of Mr. Baggetta's recruitment had caused him significant loss.

It has to be noted firstly, as regards the costs and expenses, that the applicant had the benefit of legal aid before the Commission and then before the Court.

In addition, it is only the prosecution instituted in Cosenza that is relevant (see paragraphs 16-17 above). Yet the proceedings against the applicant in Rome and Reggio Calabria also contributed to the postponement of his taking up his duties (see paragraphs 12-13 and 14 in fine above); accordingly, the Court has to take account only of material loss he may have suffered after April 1983, the date when those proceedings were concluded. Nor is there anything to suggest that Mr. Baggetta was unable to take up other paid work and thus

mitigate his material loss.

Mr. Baggetta also undoubtedly sustained non-pecuniary damage, in that he was left in prolonged uncertainty as to the outcome of the proceedings and their financial repercussions.

29. These various factors do not lend themselves in the present case to precise quantification. The Court has taken them together and, as required by Article 50 (art. 50), on an equitable basis and awards the applicant compensation of fifteen million lire.

30. At the hearing, the applicant's lawyer requested the Court to recommend the adoption by the respondent State of certain legislative measures, but this request clearly falls outside the scope of the case (see, *mutatis mutandis*, the Corigliano judgment of 10 December 1982, Series A no. 57, p. 17, § 53).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Rejects the application for the case to be struck out of the list;
2. Holds that there has been a violation of Article 6 § 1 (art. 6-1) of the Convention;
3. Holds that the respondent State is to pay to the applicant the sum of fifteen million Italian lire (15,000,000 LIT) by way of just satisfaction;
4. Rejects 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 25 June 1987.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar