

In the case of *Gilberti v. Italy**,

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 Thór Vilhjálmsson,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr B. Walsh,
Mr C. Russo,
Mr A. Spielmann,
Mr N. Valticos,
Mr S.K. Martens,

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

Having deliberated in private on 28 October and 27 November 1991,

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

Notes by the Registrar

* The case is numbered 19/1991/271/342. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

*** The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

PROCEDURE

1. The case was referred to the Court on 8 March 1991 by the European Commission of Human Rights ("the Commission"), within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 12665/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mrs Silvia Gilberti, on 21 January 1987.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

2. On 23 April 1991 the President of the Court decided that, pursuant to Rule 21 para. 6 of the Rules of Court and in the interests of the proper administration of justice, this case and the cases of *Nonnis, Trotto, Nibbio, Borgese, Biondi, Macaluso, Monaco, Cattivera, Seri, Manunza, Gori, Casadio, Testa, Lestini, Covitti, Zonetti, Simonetti* and *Dal Sasso*¹ should be heard by the same

Chamber.

1 Gilberti (19/1991/271/342); Nonnis (23/1991/275/346); Trotto (26/1991/278/349); Nibbio (28/1991/280/351); Borgese (29/1991/281/352); Biondi (30/1991/282/353); Monaco (32/1991/284/355); Cattivera (34/1991/286/357); Seri (35/1991/287/358); Manunza (37/1991/289/360); Gori (45/1991/297/368); Casadio (52/1991/304/375); Testa (53/1991/305/376); Lestini (54/1991/306/377); Covitti (55/1991/307/378); Zonetti (56/1991/308/379); Simonetti (57/1991/309/380); Dal Sasso (60/1991/312/383)

3. The Chamber to be constituted for this purpose included ex officio Mr C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On the same day, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Matscher, Mr J. Pinheiro Farinha, Mr L.-E. Pettiti, Mr B. Walsh, Mr N. Valticos and Mr S.K. Martens (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Subsequently, Mr A. Spielmann, substitute judge, replaced Mr Pinheiro Farinha, who had resigned and whose successor at the Court had taken up his duties before the deliberations held on 28 October (Rules 2 para. 3 and 22 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Deputy Registrar, consulted the Agent of the Italian Government ("the Government") and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). In accordance with the order made in consequence, the Registrar received the Government's memorial on 16 July 1991. By a letter received on 22 September, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. On 11 March the Registrar had sent to the applicant the enquiry provided for in Rule 33 para. 3 (d). After several telephone conversations, Mrs Gilberti's lawyer replied in writing, on 7 October, that his client had not manifested an interest in the proceedings pending before the Court.

Accordingly, the President instructed the Registrar to obtain the opinion of the Government and the Delegate of the Commission regarding the possibility of striking the case out of the list (Rule 49 para. 2). Their observations reached the registry on 16 and 17 October.

6. On 24 October the Chamber decided to dispense with the hearing fixed for 28 October, having found that the conditions for such derogation from the usual procedure were satisfied (Rules 26 and 38).

AS TO THE FACTS

7. Mrs Silvia Gilberti is an Italian national and resides at Monterotondo (Rome). The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-20 of its report):

"16. On 11 March 1985 the applicant brought an action against the 'Istituto Nazionale della Previdenza Sociale' (INPS) before the Rome magistrate's court ('pretore') in order to be reinstated in her right to a disability pension, which had been withdrawn with effect

from 1 October 1983, and to obtain a court order against the INPS for the pension arrears.

17. The investigation began at the hearing of 14 June 1985, which was followed by hearings on 5 December 1985 (at the end of which the court ordered a medical opinion), 20 February 1986 (adjourned at the parties' request pending the submission of the opinion) and 18 April 1986, on which date the medical opinion was filed with the registry.

18. At the hearing of 30 May 1986, the applicant requested that the expert be summoned for clarifications; this request was reiterated at the hearing of 19 June 1986.

19. The expert appeared at the hearing of 10 July 1986, which ended with the dismissal of the applicant's claim by the magistrate's court. The text of the decision was filed with the registry on 11 July 1986.

20. On 10 October 1986 the applicant appealed against the above decision and on 13 October 1986 the presiding judge of the Rome District Court fixed the hearing before its competent chamber for 15 November 1988. On that date, the hearing was adjourned to 14 March 1989 because the District Court had not received the case file pertaining to the lower court proceedings.

21."

8. According to the information supplied by the Government to the European Court, the District Court dismissed the applicant's appeal on 16 October 1990. That judgment, which was filed with the registry on 17 June 1991, has apparently not been the subject of an appeal to the Court of Cassation.

PROCEEDINGS BEFORE THE COMMISSION

9. In her application of 21 January 1987 to the Commission (no. 12665/87), Mrs Gilberti complained of the length of the civil proceedings brought by her; she relied on Article 6 para. 1 (art. 6-1) of the Convention.

10. On 11 May 1990 the Commission declared the application admissible. In its report of 15 January 1991 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment*.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 223-C of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

11. By a letter of 7 October 1991 Mr Angelozzi, counsel for Mrs Gilberti before the Commission, informed the Court that, when he had contacted his client in good time with a view to her participation in the proceedings, the latter had shown no interest. He confirmed this at the hearing on 28 October in the Nibbio, Borgese, Biondi, Monaco and Lestini v. Italy cases.

The Government were consulted on whether the case should be struck out of the list pursuant to Rule 49 para. 2 of the Rules of Court and answered in the affirmative, in view of the applicant's "expressed intention of withdrawing".

The Delegate of the Commission considered that the information received from Mr Angelozzi gave insufficient details concerning the real intentions of the applicant: it was not possible to determine therefrom whether there was indeed a "fact of a kind to provide a solution of the matter" (Rule 49 para. 2). Furthermore, the Delegate questioned whether it was possible to regard Mrs Gilberti, despite her "apparent silence", as having lost "any legal interest in having the violation of the Convention ... established". In any event "the absence of a clear and unequivocal manifestation of intention" precluded, in his view, saying that there had been a withdrawal, "even an implied one". Moreover the present case was one of a number of cases which "should be placed in a context that goes well beyond the interest of each applicant".

12. According to Rule 49 para. 2 of the Rules of Court:

"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."

Notwithstanding several reminders from the registry over a period of almost seven months, and therefore well in excess of the usual period of two weeks prescribed in Rule 33 para. 3 (d), the applicant showed no interest in the proceedings before the Court. In formal terms there has not been a withdrawal for the purposes of paragraph 1 of Rule 49 inasmuch as the applicant does not have the status of a party to the proceedings, since Protocol No. 9 (P9), which gives the individual applicant the right, subject to certain conditions, to bring his case before the Court, has not yet come into force (see the Owners' Services Ltd v. Italy judgment of 28 June 1991, Series A no. 208-A, p. 8, para. 10). The Court considers nevertheless that there has been in this case an implied withdrawal which constitutes a "fact of a kind to provide a solution of the matter". It may indeed be questioned whether there can still be said to be any dispute.

In addition, the Court discerns no reason of *ordre public* (public policy) for continuing the proceedings (Rule 49 para. 4). In this connection it points out that in a number of previous cases it had occasion to review the "reasonableness" of the length of civil proceedings in various Contracting States, including Italy (see, with regard to that country, the Pretto and Others judgment of 8 December 1983, the Capuano judgment of 25 June 1987, the Brigandi, Zanghi and Santilli judgments of 19 February 1991 and the Pugliese (II), Caleffi and Vocaturo judgments of 24 May 1991, Series A nos. 71, 119, 194-B-C-D and 206-A-B-C). In so doing it specified the nature and the extent of the obligations arising in this context from Article 6 para. 1 (art. 6-1) of the Convention. Furthermore, a large number of cases which raise similar questions and in which it is shortly to give judgment are still pending before it. Finally, according to information provided by the Delegate of the Commission, 410 applications concerning compliance with the "reasonable time" requirement, in Italy, are pending before the Commission.

Accordingly, the case should be struck out of the list. The Court nevertheless reserves the right to restore the case to the list if a new situation arises capable of justifying such a course.

FOR THESE REASONS AND WITH THIS RESERVATION, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of the Rules of Court

on 3 December 1991.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar