

In the case of *Barbagallo 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 F. Matscher,
Mr B. Walsh,
Mr C. Russo,
Mr A. Spielmann,
Mr N. Valticos,
Mr A.N. Loizou,
Mr J.M. Morenilla,
Mr F. Bigi,

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

Having deliberated in private on 30 October 1991 and 24 January 1992,

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

Notes by the Registrar

* The case is numbered 38/1991/290/361. 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.

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 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13132/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mrs Emilia Barbagallo, on 27 June 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. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 30).

3. On 23 April 1991 the President of the Court decided that, pursuant to Rule 21 para. 6 and in the interests of the proper administration of justice, this case and the cases of Diana, Ridi,

Casciaroli, Manieri, Mastrantonio, Idrocalce S.r.l., Owners' Services Ltd, Cardarelli, Golino, Taiuti, Maciariello, Manifattura FL, Steffano, Ruotolo, Vorrasi, Cappello, G. v. Italy, Caffè Roversi S.p.a., Andreucci, Gana, Cifola, Pandolfelli and Palumbo, Arena, Pierazzini, Tusa, Cooperativa Parco Cuma, Serrentino, Cormio, Lorenzi, Bernardini and Gritti and Tumminelli* should be heard by the same Chamber.

* Cases nos. 3/1991/255/326 to 13/1991/265/336; 15/1991/267/338; 16/1991/268/339; 18/1991/270/341; 20/1991/272/343; 22/1991/274/345; 24/1991/276/347; 25/1991/277/348; 33/1991/285/356; 36/1991/288/359; 40/1991/292/363 to 44/1991/296/367; 50/1991/302/373; 51/1991/303/374; 58/1991/310/381; 59/1991/311/382; 61/1991/313/384

4. 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 F. Matscher, Mr J. Pinheiro Farinha, Sir Vincent Evans, Mr A. Spielmann, Mr I. Foighel, Mr J.M. Morenilla and Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Subsequently, Mr B. Walsh, Mr A.N. Loizou and Mr N. Valticos, substitute judges, replaced respectively Mr Pinheiro Farinha and Sir Vincent Evans, who had both resigned and whose successors had taken up their duties before the deliberations held on 30 October, and Mr Foighel, who was unable to take part in the further consideration of the case (Rules 2 para. 3, 22 para. 1 and 24 para. 1).

5. 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"), the Delegate of the Commission and the applicant's lawyer on the organisation of the proceedings (Rules 37 para. 1 and 38). In accordance with the order made in consequence, the Registrar received the memorial of the applicant - whom the President had authorised to use the Italian language (Rule 27 para. 3) - and that of the Government on 16 July 1991. By a letter received on 22 August, the Secretary to the Commission informed the Registrar that the Delegate did not consider it necessary to reply thereto.

6. On 28 June 1991 the Chamber had decided to dispense with a hearing, having found that the conditions for such derogation from the usual procedure were satisfied (Rules 26 and 38).

7. On 28 August the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

8. On 5 and 26 November respectively, the Commission and the Government filed their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50).

AS TO THE FACTS

9. Mrs Emilia Barbagallo is an Italian national and resides at Passopisciaro (Catania). She draws a disablement pension. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-27 of its report):

"16. On 18 November 1980 the applicant instituted

enforcement proceedings against Mr M., her former husband, in order to recover a sum of 2,708,800 Italian lire owing to her. In the course of the proceedings certain movable property worth 525,000 lire was attached.

17. On 11 December 1980 Mrs C., Mr M.'s wife, lodged an objection to the attachment on the ground that she was sole owner of the property concerned.

18. The first hearing before the deputy magistrate (vice pretore) of Francavilla Sicilia took place on 15 December 1980. The investigation proceeded at hearings on 27 April 1981, 13 July 1981, 7 December 1981, 22 February 1982 and 8 March 1982. At the last-mentioned hearing the parties made their final submissions and the case was adjourned until 26 April 1982, on which date judgment was reserved.

19. In a decision of 19 July 1982 the deputy magistrate found that he lacked jurisdiction and ruled that the merits of the objection fell to be determined by the Messina District Court. The text of the decision was lodged with the registry on the same day.

20. On 13 December 1982 the applicant took proceedings against Mr M. and Mrs C. in the Messina District Court. Hearings before the investigating judge took place on 21 March 1983, 4 July 1983, 7 November 1983, 6 March 1984 and 5 June 1984.

21. At the latter hearing the parties made their final submissions and the investigating judge set the case down for hearing by the appropriate chamber of the court on 16 October 1985. At the close of that hearing, the District Court ordered additional investigative steps (the examination of certain witnesses).

22. On 3 March 1986 three witnesses were examined by the investigating judge, after which the case was adjourned for final submissions to be made on 16 June 1986. On that date the case was ready to be tried and was referred by the investigating judge to the appropriate chamber of the court, which heard the case on 20 January 1988.

23. On 27 January 1988 the District Court found that Mr M. had not been summonsed in due form and directed the applicant to take out a new writ, which she did on 9 March 1988.

24. Two hearings took place before the investigating judge on 18 April and 21 November 1988. On the latter date the case was referred to the appropriate chamber of the court.

25. The hearing before that chamber, scheduled for 21 December 1988, was postponed to 15 May 1990. However, at the request of the parties the hearing was brought forward to 10 May 1989.

26. On 17 May 1989 the District Court found that Mrs C. was sole owner of an item of property affected by the attachment, and dismissed her objection for the remainder.

27. The text of the decision was lodged with the registry on 24 July 1989"

10. According to the information provided to the European Court

by the applicant, that judgment became final on 25 October 1989.

PROCEEDINGS BEFORE THE COMMISSION

11. Mrs Barbagallo lodged her application with the Commission on 27 June 1987. She complained of the length of the civil proceedings brought by her and relied on Article 6 para. 1 (art. 6-1) of the Convention.

12. On 11 May 1990 the Commission declared the application (no. 13132/87) 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 230-I 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

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

13. The applicant claimed that her civil action had not been tried within a "reasonable time" as required under Article 6 para. 1 (art. 6-1) of the Convention, according to which:

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

The Government disputed this view, whereas the Commission accepted it.

14. The period to be taken into consideration began on 11 December 1980 when Mrs C. entered her objection to the enforcement proceedings instituted by the applicant. It ended on 25 October 1989, when the judgment of the Messina District Court became final (see paragraph 10 above).

15. The reasonableness of the length of proceedings is to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment.

16. The Government invoked the excessive workload of the District Court. In addition, the applicant had not requested that her case be examined more rapidly.

17. The case was, however, a simple one. Yet it came before two first-instance courts. It took the deputy magistrate of Francavilla Sicilia approximately one and a half years (15 December 1980 - 19 July 1982), and eight hearings, to find that he lacked jurisdiction. For its part, the Messina District Court took more than five years to establish that Mr M.'s summons was not in due form (13 December 1982 - 27 January 1988) and six years and five months to allow Mrs C.'s objection in part (13 December 1982 - 17 May 1989). The applicant and the Commission also rightly drew attention to the fact that the proceedings remained dormant from 5 June 1984 to 16 October 1985, and then from 16 June 1986 to 20 January 1988.

The Government pleaded the backlog of cases in the Messina

District Court, but Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of its requirements (see, inter alia, the *Vocaturo v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 32, para. 17).

Clearly, the respondent State cannot be held responsible for the five or so months which Mrs Barbagallo waited before taking proceedings against Mr M. and Mrs C. in the Messina District Court (19 July - 13 December 1982), or the six or so weeks which she took to renew the summons against Mr M. (27 January - 9 March 1988), or again the three months which elapsed before the judgment became final (24 July - 25 October 1989). Far less can the court be criticised for having brought forward by nearly one year, at the parties' request, the date of the hearing which was to have been held on 15 May 1990.

18. Taking the proceedings as a whole, however, the Court cannot regard as "reasonable" the lapse of time in the present case.

There has therefore been a violation of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

19. According to Article 50 (art. 50):

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

20. Mrs Barbagallo requested in the first place a sum for pecuniary damage, without giving any figures.

21. Like the Government, the Court takes the view that there is no evidence of the existence of such damage resulting from the violation found; accordingly, there are no grounds for awarding a sum under this head.

B. Costs and expenses

22. The applicant also sought 1,734,430 Italian lire for the costs incurred before the Convention organs.

Having regard to the evidence at its disposal and to its case-law in this field, the Court awards her the sum in its entirety.

C. Interest

23. The Commission invited the Court to fix for the Government - who did not give their opinion - a compulsory time-limit for executing the present judgment and to make provision for the payment of interest in the event of their failure to comply therewith.

24. The first of these proposals is in conformity with a practice followed by the Court since October 1991.

As to the second, the Court does not consider it appropriate to require any payment of interest in this instance, particularly as

no such request was made by the applicant.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 para. 1 (art. 6-1);
2. Holds that the respondent State is to pay to Mrs Barbagallo, within three months, 1,734,430 (one million seven hundred and thirty-four thousand, four hundred and thirty) Italian lire for costs and expenses;
3. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 27 February 1992.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar