

In the case of *Borgese 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 1991 and 24 January 1992,

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

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#### Notes by the Registrar

\* The case is numbered 29/1991/281/352. 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.

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#### 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. 12870/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Michelangelo Borgese, on 15 April 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 he wished to take part in the proceedings and designated the lawyer who would represent him (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 *Gilberti*,

Nonnis, Trotto, Nibbio, Biondi, Macaluso, Monaco, Cattivera, Seri, Manunza, Gori, Casadio, Testa, Lestini, Covitti, Zonetti, Simonetti and Dal Sasso\* should be heard by the same Chamber.

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\* Cases nos. 19/1991/271/342; 23/1991/275/346; 26/1991/278/349; 28/1991/280/351; 30/1991/282/353 to 32/1991/284/355; 34/1991/286/357; 35/1991/287/358; 37/1991/289/360; 45/1991/297/368; 52/1991/304/375 to 57/1991/309/380; 60/1991/312/383

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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 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 hearing (Rules 2 para. 3 and 22 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). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 17 July 1991 and the applicant's memorial on 25 July. By a letter received on 22 September, the Secretary to the Commission informed the Registrar that the Delegate would submit oral observations.

6. On 29 August the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

7. In accordance with the decision of the President - who had given the applicant leave to use the Italian language (Rule 27 para. 3) -, the hearing took place in public in the Human Rights Building, Strasbourg, on 28 October 1991. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr G. Raimondi, magistrato, seconded to the Diplomatic Legal Service of the Ministry of Foreign Affairs,	Co-Agent,
Mr G. Manzo, magistrato, seconded to the Ministry of Justice,	
Mrs A. Passannanti, magistrato, seconded to the Ministry of Justice,	Counsel;

(b) for the Commission

Mr J.A. Frowein,	Delegate;
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(c) for the applicant

Mr G. Angelozzi, avvocato,	Counsel,
Mr M. de Stefano, avvocato,	Adviser.

The Court heard addresses by Mr Raimondi and Mr Manzo for the Government, by Mr Frowein for the Commission and by Mr Angelozzi and Mr de Stefano for the applicant, as well as their answers to its question.

8. On 14 October the Government had lodged their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50); on 5 November the Commission filed its observations on those claims.

#### AS TO THE FACTS

9. Mr Michelangelo Borgese is an Italian national and resides in Rome. He is unemployed. 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 4 September 1984 the applicant took proceedings before the Rome magistrate's court (pretore) against the Istituto Nazionale della Previdenza Sociale (INPS) to establish his entitlement to a disability pension.

17. The investigation commenced at the hearing of 13 November 1984, on which date the magistrate's court called for a medical report. The hearing of 19 December 1984 was postponed owing to a strike by lawyers. At the hearing on 9 January 1985 the expert appointed was sworn in. On 13 February 1985 the medical report was lodged with the registry.

18. Two further hearings took place on 6 March and 17 April 1985. Subsequently, at the close of the hearing on 22 May 1985, the magistrate's court ordered the INPS to pay the pension claimed and the arrears as from 1 November 1983. The text of the decision was lodged with the registry on 22 May 1985.

19. On 5 November 1985 the INPS appealed against the above decision and on 12 November 1985 the presiding judge of the Rome District Court fixed the hearing before the appropriate chamber of the court for 17 September 1987.

20. On that date, the court ordered a further medical report. At the close of the hearing on 12 April 1988, the District Court found that the applicant qualified for the pension as from 31 December 1984, and dismissed the appeal by the INPS for the remainder. The text of the decision was lodged with the registry on 6 July 1988.

21. ... ."

10. According to the information supplied to the European Court by the applicant, the District Court's judgment became final on 6 July 1989, there having been no appeal to the Court of Cassation.

#### PROCEEDINGS BEFORE THE COMMISSION

11. Mr Borgese lodged his application with the Commission on 15 April 1987. He complained of the length of the civil proceedings brought by him and relied on Article 6 para. 1 (art. 6-1) of the Convention.

12. On 11 May 1990 the Commission declared the application (no. 12870/87) 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\*.

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\* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 228-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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## FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

13. At the hearing the Government confirmed the submission put forward in their memorial, in which they requested the Court to hold "that there [had] been no violation of the Convention in the present case".

### AS TO THE LAW

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

14. The applicant claimed that his 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.

15. The period to be taken into consideration began on 4 September 1984 when the proceedings were instituted against the INPS in the magistrate's court. It ended on 6 July 1989 when the Rome District Court's judgment became final (see the *Pugliese (II) v. Italy* judgment of 24 May 1991, Series A no. 206-A, p. 8, para. 16).

16. 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.

17. The Government referred to the complexity of the facts and the inaction of the applicant, who had never requested that the hearings be held at shorter intervals. They also invoked the excessive workload of the relevant courts and the latter's duty in principle to deal with cases in the order in which they were registered.

According to the applicant, the case was a simple one and his own conduct could have had only a negligible effect.

18. The Court stresses that special diligence is necessary in employment disputes, which include pensions disputes (see, *inter alia*, *mutatis mutandis*, the *Vocaturo v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 32, para. 17). Italy moreover acknowledged this by amending, in 1973, the special procedure laid down in this field and by introducing, in 1990, emergency measures intended to speed up the conduct of such proceedings.

The Government pleaded the backlog of cases in the relevant courts, 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 the same judgment, *ibid.*).

This case did not give rise to any complex question of fact or law. Moreover the proceedings were conducted at a normal pace in the

magistrate's court. Furthermore, the applicant would appear to have delayed serving on the INPS the decision of 22 May 1985 so that the State cannot be held responsible for the five and a half months which elapsed before the appeal was filed on 5 November 1985; nor is it answerable for the year which went by before the judgment of 12 April 1988 became final.

On the other hand, the appeal proceedings remained dormant for more than twenty-two months. On 12 November 1985 the President of the Rome District Court set down the first hearing before the competent chamber for 17 September 1987, on which date the chamber called for a further medical opinion; it does not appear from the evidence that other investigative measures were taken prior to that.

19. Accordingly and in view of what was at stake in the proceedings for Mr Borgese, 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)

20. 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

21. The applicant claimed in the first place 8,000,000 Italian lire for damage.

In the Government's contention, he sustained no pecuniary damage; he had moreover secured an order that his disability pension be paid to him with effect from 31 December 1984. As to non-pecuniary damage, a finding of a violation would constitute sufficient just satisfaction.

22. There is no evidence that the violation found caused Mr Borgese pecuniary damage. On the other hand, he must have suffered a degree of non-pecuniary damage for which the Court, making an assessment on an equitable basis, awards him 3,000,000 lire.

### B. Costs and expenses

23. The applicant also sought 3,000,000 lire for costs and expenses incurred before the Convention organs.

Having regard to the evidence at its disposal and to its case-law in this field, the Court awards him 2,000,000 lire under this head.

### C. Interest

24. Mr Borgese requested finally that interest be paid on the sums awarded, at the statutory rate in force in his country and in respect of the period running from the delivery of the present judgment to the payment of such sums by the national authorities.

The Commission invited the Court to fix for the Government - who did not give their opinion - a compulsory time-limit for executing the

judgment and to make provision for the payment of interest in the event of their failure to comply therewith.

25. 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.

FOR THESE REASONS, THE COURT

1. Holds by five votes to four that there has been a violation of Article 6 para. 1 (art. 6-1);
2. Holds unanimously that the respondent State is to pay to the applicant, within three months, 3,000,000 (three million) Italian lire for non-pecuniary damage and 2,000,000 (two million) lire for costs and expenses;
3. Dismisses unanimously 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 26 February 1992.

Signed: Rolv RYSSDAL  
President

Signed: Marc-André EISSEN  
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the dissenting opinion of Mr Thór Vilhjálmsson, Mr Pettiti, Mr Russo and Mr Valticos is annexed to the present judgment.

Initialled: R. R.

Initialled: M.-A. E.

DISSENTING OPINION OF JUDGES THÓR VILHJÁLMSOON, PETTITI,  
RUSSO AND VALTICOS

(Translation)

We are unable to agree with the majority in this case because we do not consider that the sum of the delays for which the State can be held responsible amounts to an unreasonable time in this instance.