

In the case of Cappello 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 22/1991/274/345. 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. 12783/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mrs Caterina Cappello, on 7 February 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, G. v. Italy, Caffè Roversi S.p.a., Andreucci, Gana, Barbagallo, 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; 24/1991/276/347; 25/1991/277/348; 33/1991/285/356; 36/1991/288/359; 38/1991/290/361; 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) - on 15 July 1991 and the Government's memorial on 16 July. 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 10 October and 5 November respectively, the Government and the Commission filed their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50).

AS TO THE FACTS

9. Mrs Caterina Cappello is an Italian national and resides in Rome. She is a housewife. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-22 of its report):

"16. On 19 August 1976 the applicant was knocked down by

a motorcycle and seriously injured. Criminal proceedings were taken against the rider, a minor. On 23 March 1979 the Cagliari Juvenile Court acquitted him under an amnesty.

17. By a writ dated 16 May 1980, the applicant brought an action for damages before the District Court at Tempio Pausania (Sassari) against the young motorcyclist, his parents and the owner of the motorcycle.

18. The first hearing, set down for 2 October 1980, did not take place until 2 October 1981 owing to the transfer of the investigating judge responsible for the case. On 16 February 1984 the case was ready to be heard and was referred to the appropriate chamber of the court, before which the parties were to appear on 22 November 1984. However, the hearing was postponed indefinitely owing to the transfer of the investigating judge.

19. The investigating judge was replaced in January 1987 and the hearing before the court chamber was set for 19 February 1987, but on that date the proceedings were interrupted following the death of one defendant's lawyer.

20. The proceedings were reopened by a writ filed with the court registry on 24 March 1987.

21. The hearing before the court chamber, initially set down for 11 June 1987, was not held until 19 November 1987.

22. On 16 December 1987 the District Court delivered judgment, allowing the applicant's claims. The text of the judgment was lodged with the registry on 19 December 1987.

23."

10. On 29 June 1990, the defendants having appealed and, it appears, the applicant having filed a cross-appeal, the Cagliari Court of Appeal confirmed the first-instance judgment while increasing the damages awarded to Mrs Cappello. The text of its decision was filed with the registry on 26 September 1990. It does not seem that there has been any appeal to the Court of Cassation.

PROCEEDINGS BEFORE THE COMMISSION

11. Mrs Cappello lodged her application with the Commission on 7 February 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. 12783/87) admissible. In its report of 5 December 1990 (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-F 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 16 May 1980, when the applicant brought her action for damages in the Tempio Pausania District Court. It probably ended, at the latest, on 26 September 1991, the date by which the judgment of the Cagliari Court of Appeal must have become final (see the Pugliese (II) v. Italy judgment of 24 May 1991, Series A no. 206-A, p. 8, para. 16).

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 and the transfer of two judges. In addition, the applicant had not requested that her case be examined more rapidly.

17. As Mrs Cappello stressed, however, the case was a simple one. Yet it took almost four years to complete the investigation (16 May 1980 - 16 February 1984) and there was a long period of stagnation in the proceedings in the competent chamber of the District Court (22 November 1984 - 19 February 1987) before they were continued at a more normal pace.

The Government pleaded the backlog of cases in the Tempio Pausania District Court and the transfer of two judges, 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 *Vocaturò v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 32, para. 17).

The case-file does not provide many details on the proceedings in the Cagliari Court of Appeal. The State cannot be held responsible for the period of several months which the defendants took to appeal, but it may be noted that approximately three months elapsed between the adoption of the judgment and the filing of its text with the registry (29 June - 26 September 1990).

18. In any event, 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 and costs

20. Mrs Cappello claimed 15,000,000 Italian lire for damage and for costs and expenses incurred before the national courts and the European Court.

There is, however, no evidence that the violation found caused her pecuniary damage and entailed for her additional costs in the domestic proceedings, as the Government rightly pointed out. On the other hand, she must have sustained a degree of non-pecuniary damage which - notwithstanding the contrary view expressed by the Government - the finding of a violation is not sufficient to compensate and for which the Court, making an assessment on an equitable basis, awards her 10,000,000 lire.

It remains to determine the question of the costs incurred by the applicant in Strasbourg. Having regard to the evidence at its disposal and to its case-law in this field, the Court awards her 3,000,000 lire.

B. Interest

21. 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.

22. 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 Cappello, within three months, 10,000,000 (ten million) Italian lire for non-pecuniary damage and 3,000,000 (three million) 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