

In the case of Cardarelli 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 10/1991/262/333. 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. 12148/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Achille Cardarelli, on 9 April 1986.

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, Mr Paolo Soldani Benzi, avvocato, informed the Registrar, on 10 April 1991, of Mr Cardarelli's death and of his appointment as trustee of the applicant's estate; in that capacity and after receiving the authorisation of the Florence magistrate's court, he stated that he wanted the proceedings to continue and to take part in them as the representative of the deceased's estate. For reasons of convenience

Mr Cardarelli will continue to be referred to as "the applicant" in this judgment.

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, Golino, Taiuti, Maciariello, Manifattura FL, Steffano, Ruotolo, Vorrasi, Cappello, 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 9/1991/261/332; 11/1991/263/334 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; 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 Mr Soldani Benzi - whom the President had authorised to use the Italian language (Rule 27 para. 3) - on 11 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 "possible" claims by the applicant for just satisfaction (Article 50 of the Convention) (art. 50). In fact Mr Soldani Benzi submitted such claims, which were in any case expressed in vague terms, only in a letter of 22 December 1991, after the expiry of the time-limit laid down in

Rule 50 para. 1.

AS TO THE FACTS

9. Mr Achille Cardarelli was an Italian national and resided in Florence until his death. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-32 of its report):

"16. By summons served on 23 December 1977 the applicant, as the owner of a flat damaged by water seepage, took proceedings before the Florence District Court against Mr M., the owner of the flat from which the seepage originated. He asked that the cause of the water damage be remedied and claimed damages.

17. The investigation opened at the hearing of 2 February 1978, followed by hearings on 18 May 1978 (when the heirs of the person who had renovated the house intervened in the proceedings) and 8 March 1979 (initially fixed for 19 October 1978).

18. At the hearing of 27 April 1979, as further seepages had occurred, the applicant asked the investigating judge to order the measures required for the protection of his property against any subsequent damage. He also informed the judge that Mr M.'s counsel had died, and this caused an interruption of the proceedings.

19. On 2 May 1979, in order to decide on the request for protective measures, the investigating judge appointed an expert who was sworn in at the hearing of 31 May 1979. He was given sixty days to lodge his report. This time-limit was not complied with and so the examination of the case, after being adjourned to 5 October, 8 November and 6 December 1979, did not resume until the hearing of 10 January 1980.

20. In the meantime, by summons served on 26 October 1979, the applicant took proceedings against Mr M. before the Florence District Court for compensation for the damage caused by the new seepages.

21. On 1 February 1980 the investigating judge, referring to the findings of the expert's inspection, ordered that the water supply system be cut off.

22. On 15 February 1980 Mr M. requested that the order be rescinded as the measure adopted amounted to compelling his tenants to move out of the premises. On 16 February 1980 the investigating judge instructed the parties to appear in person at the hearing of 22 February 1980; at the close of the hearing on that date he summoned the expert to the hearing of 29 February 1980 to receive further instructions.

23. At the hearing of 10 April 1980, the claim for damages filed by the applicant on 26 October 1979 was joined to the first claim.

24. After the expert's additional findings had been submitted, two hearings took place on 15 and 16 May 1980. On 27 May 1980 the investigating judge amended the order of 1 February 1980 and prescribed new protective measures. The expert was instructed to oversee the work and authorised to take any technical action required to prevent further water seepages.

25. Two more hearings were held on 3 and 17 July 1980. During the latter, the investigating judge granted a request by the applicant and gave the expert twelve days to complete the work.

26. However, more seepages occurred and at the hearing of 18 September 1980 the applicant asked the court to take effective

measures and replace the expert.

27. On 26 September 1980 the investigating judge decided to give precedence to the applicant's interests and ordered that the water supply system be cut off within thirty days.

28. The hearings of 5 December 1980 and 20 February 1981 were followed by a hearing on 5 March 1981, when the investigating judge fixed a hearing for 9 October 1981 for the examination of the witnesses identified by the parties. The examination proceeded at the hearings of 2 April and 24 June 1982. Owing to an error in the notifications, the next hearing, fixed for 18 November 1982, was postponed to 28 January 1983. On that date the examination of the witnesses was completed.

29. At the hearing of 3 March 1983, the parties asked for a hearing to make their final submissions. The parties began to make their final submissions on 30 June 1983, continued at the hearing of 27 October 1983 and did not finish until the hearing of 15 December 1983. The investigating judge referred the case to the competent court chamber to be heard on 10 December 1985.

30. However, the death of the defendant in October 1985 caused the proceedings to be interrupted again.

31. On 2 March 1986 the proceedings were reopened by the applicant. Another hearing before the court chamber was fixed for 23 February 1988 but did not take place because the reporting judge had been transferred to the Court of Appeal in October 1987.

32. By order of 10 July 1989, the replacement judge fixed the hearing for 30 October 1990."

10. According to the documents and information supplied to the European Court by the Government, the Commission and the applicant's lawyer:

(a) following the summons of 26 October 1979 (see paragraph 9 above, no. 20), Mr M. again requested the intervention both of the builder's heirs and the plumber;

(b) at the hearing on 30 October 1990 (see paragraph 9 above, no. 32), Mr Cardarelli's lawyer informed the District Court of his client's death, which had occurred on 21 February 1987; this caused a third interruption of the proceedings;

(c) on 8 April 1991 Mr Soldani Benzi, as trustee of the estate, sought leave from the Florence magistrate's court to continue the proceedings;

(d) having obtained such leave, on 15 April he requested the President of the District Court to set down a date for the trial hearing before the chamber;

(e) on 17 April the President of the District Court directed that the hearing should be held on 11 February 1992.

PROCEEDINGS BEFORE THE COMMISSION

11. Mr Cardarelli lodged his application with the Commission on 9 April 1986. 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. 12148/86) 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 229-G 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 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.

14. The period to be taken into consideration began on 23 December 1977 when the proceedings were instituted against Mr M. in the Florence District Court; it has not yet ended since that court has still to give judgment.

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 complexity of the facts, the number of participants in the proceedings and the interruptions due to the deaths of the defendant and his lawyer. They also mentioned the excessive workload of the Florence District Court.

17. Like the Commission, the Court notes that the case was one of some complexity. The need to have recourse to expert opinions and the presence of several defendants undoubtedly rendered the investigating judge's task more difficult. Nevertheless, most of the delays occurred after the investigation had been terminated.

In the first place, almost two years elapsed between the last hearing before the investigating judge and the hearing before the chamber (15 December 1983 - 10 December 1985).

Secondly, after the second and third interruptions there were long delays before the trial began again. The Italian State cannot be held responsible for three of them: Mr Cardarelli's lawyer waited more than two months before requesting that the proceedings be resumed following Mr M.'s death (10 December 1985 - 2 March 1986), more than three years and eight months before notifying the court of his client's death (21 February 1987 - 30 October 1990) and more than four years before requesting leave to act thereafter in his capacity as a trustee (21 February 1987 - 8 April 1991).

The same is not true of various other delays. After the above-mentioned requests of the applicant's lawyer, the District Court set down the hearings for dates nearly two years away, in one instance, and more than ten months, in the other (2 March 1986 - 23 February 1988; 8 April 1991 - 11 February 1992). Moreover the hearing to be held on 23 February 1988 did not take place until

considerably later, namely 30 October 1990, because the investigating judge had been transferred. Such delays can hardly be reconciled with the necessary diligence, which the District Court had displayed in respect of the first interruption (27 April 1979 - 31 May 1979).

The Government pleaded the backlog of cases in the 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).

18. Taking the proceedings as a whole, the Court cannot regard as "reasonable" in this instance a lapse of time which is already more than fourteen years for only one level of jurisdiction.

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

II. APPLICATION OF ARTICLE 50 (art. 50)

19. The applicant did not request any just satisfaction under Article 50 (art. 50) of the Convention in good time (see paragraph 8 above) and this is not a matter for the Court to examine of its own motion.

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 it is not necessary to apply Article 50 (art. 50) in this instance.

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