

In the case of *Casciaroli 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 29 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 5/1991/257/328. 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. 11973/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mrs Rosina Casciaroli, on 24 December 1985.

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*,

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, 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; 4/1991/256/327; 6/1991/258/329 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 hearing, 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). Pursuant to the order made in consequence, the Registrar received the applicant's memorial 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 would submit oral observations.

6. On 28 August the Commission 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 29 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;

(c) for the applicant

Mr L. Girardi, avvocato,

Counsel.

The Court heard addresses by Mr Raimondi and Mrs Passannanti for the Government, by Mr Frowein for the Commission and by Mr Girardi for the applicant, as well as their answers to its question.

8. On 5 November the Commission filed its observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50).

AS TO THE FACTS

9. Mrs Rosina Casciaroli is an Italian national and resides at Monticelli (Ascoli Piceno). 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 3 December 1975 the applicant's husband died as the result of a traffic accident involving several persons. Two civil actions (cases nos. 1061/76 and 1081/77) were brought before the Venice District Court by Mr S. and Mr P. respectively against Mr F. and Mr M., the persons presumed responsible for the accident, and their insurers.

17. Mr F. and Mr M. were also prosecuted on criminal charges, which led to the suspension of the civil proceedings against them. On 4 March 1976 the applicant entered a claim for damages in the criminal proceedings against them. They were committed for trial in the Venice District Court on 9 April 1977.

18. The trial opened with the hearing of 31 May 1978. On that date Mr M. was charged with a further offence. The court called for a medical report and transmitted the case file to the investigating judge.

19. On 29 August 1980, after receiving the medical report, the investigating judge set down the hearing before the Venice District Court for 10 December 1980. At the close of the hearing, the case was adjourned until 13 March 1981. On that date the Venice District Court found the defendants guilty of manslaughter. It then awarded the applicant damages in respect of her husband's death, provisionally assessed at 20 million lire, the payment order being immediately enforceable.

20. In the appeal lodged forthwith by the defendants, the Venice Court of Appeal - which did not receive the case-file until 20 July 1981 - considered the case at the hearing on 24 March 1982, at the close of which it upheld the trial court's decision.

21. Two days later the defendants appealed to the Court of Cassation submitting their grounds of appeal on 12 and 15 May 1982. The hearing before the Court of Cassation did not take place until 24 April 1986, on which date the appeal was dismissed. The text of the judgment was lodged with the court registry on 6 October 1986.

22. On 13 May 1986 Mr S. and Mr P. resumed their civil action before the Venice District Court and the applicant continued the action she had brought in the criminal proceedings by intervening in the civil proceedings in order to obtain payment of the damages awarded to her.

23"

10. According to the information supplied to the European Court by the participants in the Strasbourg proceedings, no less than seven hearings were held between 13 May 1986 and 24 June 1988. At these hearings the parties made various applications (for an attachment order, for the joinder of cases, for testimony to be heard) and caused several adjournments.

The investigating judge was transferred and the first hearing before his successor took place on 24 February 1989. From then until 19 April 1991, there were seven other hearings. The parties are said to have requested six adjournments because they wished to examine various documents, including the criminal file communicated to the Court of Cassation; during this period, but on an unspecified date, the investigating judge was transferred.

On 19 April 1991 his successor referred the case to the competent chamber for a decision on Mrs Casciaroli's application for evidence to be taken. The hearing is to be held on 29 January 1992.

PROCEEDINGS BEFORE THE COMMISSION

11. Mrs Casciaroli lodged her application with the Commission on 24 December 1985. 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. 11973/86) 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 229-C of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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. PRELIMINARY OBSERVATION

14. In her memorial, the applicant maintained that she had lodged her application with the Commission also on behalf of her four children.

It appears from the file, however, that she alone has the status of applicant.

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

15. Mrs Casciaroli 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.

16. The case began on 4 March 1976 when the applicant entered a claim for damages in the criminal proceedings; it remains pending in the Venice District Court.

17. 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.

18. Notwithstanding the Government's contrary view, the case was not a complex one. Yet, as the Commission and the applicant pointed out, there were several periods of stagnation in the criminal proceedings. Twenty-five months elapsed between the date on which the Venice District Court ordered further inquiries to be undertaken and that on which the investigating judge committed the defendants for trial (31 May 1978 - 29 August 1980). It then took more than four months to transmit the file to the Court of Appeal (13 March - 20 July 1981) and the Court of Cassation did not hold a hearing until more than four years after the case had been brought before it (26 March 1982 - 24 April 1986).

The Government pleaded the backlog of cases, 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).

The various delays which occurred affected the progress of the civil proceedings brought by Mr S. and Mr P. and in which Mrs Casciaroli intervened (see paragraph 9 above, nos. 16, 17 and 22). Those proceedings are far from finished, although it must be said that the parties contributed to slowing them down by numerous requests for adjournments (see paragraph 10 above).

19. In these circumstances, the Court cannot regard as "reasonable" in this instance a lapse of time of nearly sixteen years.

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

III. 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. Mrs Casciaroli claimed, for herself and for her children, 422,150,786 Italian lire for pecuniary damage and 100,000,000 for non-pecuniary damage.

22. The Court notes, like the Government, that the national courts may award the applicant financial compensation for pecuniary damage because the case is still pending before them. On the other

hand, the applicant, in view of her family circumstances, undoubtedly suffered non-pecuniary damage for which the Court, making an assessment on an equitable basis, awards her 60,000,000 lire.

B. Costs and expenses

23. The applicant sought 3,255,336 lire for her costs referable to the domestic proceedings and 18,800,000 lire for those which she claimed to have incurred before the Convention organs.

24. The first sum cannot be taken into consideration because it does not appear from the evidence that she incurred such costs in order to prevent the breach of the "reasonable time" requirement. The second figure may, however, be taken into account, but the applicant's claims are excessive; having regard to the evidence at its disposal and to its case-law in this field, the Court awards her 8,000,000 lire under this head.

C. Interest

25. 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.

26. 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 Mrs Casciaroli, within three months, 60,000,000 (sixty million) Italian lire for non-pecuniary damage and 8,000,000 (eight 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