

In the case of *Gana 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:

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#### Notes by the Registrar

\* The case is numbered 36/1991/288/359. 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. 13024/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mrs Serena Gana, on 2 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, 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.

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\* 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; 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

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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 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 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 the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50).

#### AS TO THE FACTS

9. Mrs Serena Gana is an Italian national and resides in Rome. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-23 of its report):

"16. On 14 July 1976 the applicant brought judicial

separation proceedings before the Rome District Court.

17. The preliminary hearing before the presiding judge of the court took place on 18 December 1976.

18. The hearings before the investigating judge were scheduled for the following dates: 18 February 1977, 19 April 1977, 6 May 1977, 1 July 1977, 11 November 1977, 17 January 1978, 18 April 1978, 27 June 1978, 21 November 1978 (all postponed at the applicant's request), 16 February 1979 (postponed due to the absence of the parties), 8 May 1979, 26 October 1979, 14 December 1979 (these three dates postponed at the applicant's request), 11 March 1980 (postponed due to the absence of the parties), 30 May 1980 (on which date the applicant produced certain documents) and 31 October 1980.

19. On 31 October 1980 the investigation was closed and the investigating judge referred the case to the appropriate chamber of the court. The hearing before the court chamber took place on 13 April 1981 and the separation was decreed on 27 April 1981. The text of the decision was lodged with the court registry on 5 October 1981.

20. On 23 November 1981 Mr C., the applicant's husband, lodged an appeal, requesting an alteration of the terms of separation.

21. Three hearings were held before the Rome Court of Appeal on 21 January 1982 (postponed at the appellant's request), 28 January 1982 and 25 March 1982 (postponed at the request of the parties).

22. At the hearing of 1 April 1982 the case was referred to the appropriate chamber of the Court of Appeal. The hearing before that chamber took place on 15 April 1983, on which date judgment in the case was reserved. On 6 May 1983 the Court of Appeal dismissed the application by Mr C. The text of the decision was lodged with the court registry on 3 October 1983.

23. On 13 November 1984 Mr C. appealed to the Court of Cassation. The hearing on 5 February 1988 ended in the dismissal of the appeal by the Court of Cassation. The text of the decision was lodged with the registry on 15 July 1988."

#### PROCEEDINGS BEFORE THE COMMISSION

10. Mrs Gana lodged her application with the Commission on 2 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.

11. On 11 May 1990 the Commission declared the application (no. 13024/87) 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\*.

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\* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 230-H 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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## AS TO THE LAW

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

12. 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.

13. The period to be taken into consideration began on 14 July 1976 when the proceedings were instituted in the Rome District Court. It ended on 15 July 1988 when the Court of Cassation's judgment was filed with the registry.

14. 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.

15. The Government invoked Mrs Gana's conduct and the excessive workload of the Court of Cassation. In addition, the applicant had not sought to have her case examined more rapidly.

16. The Court notes that the parties contributed to a large extent, by several applications for adjournment and by their absence from certain hearings, to slowing down the investigation at first instance and during the appeal proceedings, which, for the rest, would seem to have been conducted at a normal pace. In addition, the State cannot be held responsible for the period, of more than thirteen months, between the filing of the judgment in the Rome Court of Appeal (3 October 1983) and Mr C.'s appeal on points of law (13 November 1984).

However, the Commission rightly draws attention to two periods of stagnation for which the State was responsible: from 1 April 1982 (last hearing before the judge responsible for preparing the case) to 15 April 1983 (trial hearing before the relevant chamber of the Court of Appeal) and from 13 November 1984 (appeal to the Court of Cassation) to 5 February 1988 (hearing). There was another period at first instance, lasting from 31 October 1980 (last hearing before the investigating judge) to 13 April 1981 (hearing before the relevant chamber). These three periods represented a total of six years and two months. It is furthermore difficult to understand why each of the three decisions given was not lodged with the registry for about five months (27 April - 5 October 1981, 6 May - 3 October 1983 and 5 February - 15 July 1988).

The Government pleaded the backlog of cases in the Court of Cassation, 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 *Vocatur v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 32, para. 17).

17. Accordingly, the Court cannot regard as "reasonable" in this instance a lapse of time of twelve years, in particular as special diligence is required in cases concerning civil status and capacity (see the *Bock v. Germany* judgment of 23 March 1989, Series A no. 150, p. 23, para. 49).

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

II. APPLICATION OF ARTICLE 50 (art. 50)

18. 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

19. Mrs Gana claimed in the first place 30,000,000 Italian lire for non-pecuniary damage.

She must indeed have suffered some such damage, for which the finding of a violation does not constitute sufficient reparation - notwithstanding the contrary opinion of the Government. The Court, making an assessment on an equitable basis, awards her 4,000,000 lire under this head.

B. Costs and expenses

20. Mrs Gana also claimed 8,000,000 lire in respect of costs and expenses incurred before the Convention organs.

Having regard to the evidence at its disposal and its case-law in this field, the Court awards 4,000,000 lire under this head.

C. 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 Gana, within three months, 4,000,000 (four million) Italian lire for non-pecuniary damage and 4,000,000 (four 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