In the case of Idrocalce S.r.l. 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 8/1991/260/331. 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. 12088/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian company, Idrocalce S.r.l., on 1 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, the applicant company stated that it wished to take part in the proceedings and designated the lawyer who would represent it (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, 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.

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* Cases nos. 3/1991/255/326 to 7/1991/259/330; 9/1991/261/332 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

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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 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 memorials of the applicant and the Government on 16 July 1991. 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. 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 G. Larato, avvocato, Counsel.

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

8. On 10 October the Government had filed their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50); on 5 November the Commission lodged its observations on those claims.

AS TO THE FACTS

9. The applicant is a limited company in the process of liquidation. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-26 of its report):

> "16. By a writ served on 26 September and 2 October 1980, the applicant company took proceedings before the Taranto District Court against Mr N., its debtor, and against the E. company, for a declaration that the latter owed N. the sum of 30,000,000 Italian lire. The purpose of its action was to have deducted from that sum the amount which it claimed to be owed by Mr N.
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> 17. At the same time the applicant company issued a writ against the Istituto Nazionale della Previdenza Sociale (INPS) which was concerned in the case as Mr N.'s creditor.
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> 18. The investigation commenced at the hearing of 6 November 1980. Mr N. and the E. company did not appear and were found in default. Three further hearings took place on 19 February, 23 April and 9 July 1981, on which date the applicant and the INPS made their final submissions and the case was referred to the appropriate chamber of the court.
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> 19. After hearing the applicant and the INPS at the sitting on 26 March 1982, the court chamber deemed it necessary to examine witnesses (whom the applicant had reserved the right to identify at a later stage) in order to establish whether Mr N. was owed money by the E. company. By order of 30 April 1982 the case was remitted to the investigating judge.
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> 20. The sole witness finally identified was summoned to the hearing of 24 June 1982 and then to that of 18 November 1982 but did not appear. On 17 February 1983 the investigating judge ordered the interruption of the proceedings on account of Mr N.'s bankruptcy.
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> 21. On 21 February 1983 the applicant reopened the proceedings which resumed at the hearing of 28 April 1983. On 14 July and 1 December 1983 the proceedings in the case were adjourned at the request of the INPS as the applicant and the other parties had not appeared in court. At the hearing on 1 March 1984 the applicant and the INPS made their final submissions and the case was referred to the appropriate chamber of the court.
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> 22. Having heard submissions by the applicant and the INPS at the hearing of 2 November 1984, the chamber found that the interview which it had ordered on 30 April 1982 had not been carried out and by order of 16 November 1984 remitted the case for a second time to the investigating judge.

23. The witness to be examined was summoned to the hearing of 14 Februarry 1985 but did not appear. The investigating judge then instructed the police to ensure that the witness attended the hearing of 16 May 1985. However, the instruction was not carried out and the hearing did not take place until 3 October 1985. By then the case was ready for decision; the applicant and the INPS accordingly made their final submissions at the hearing on 9 January 1986.

24. The hearing before the appropriate chamber of the court took place on 30 January 1987 and by decision of 13 February 1987 the applicant's claim was dismissed on account of Mr N.'s bankruptcy. The text of the decision was lodged with the court registry on 11 May 1987.

25. Notice of the applicant's appeal against this decision was filed with the Lecce Court of Appeal on 31 July and 5 August 1987.

26. Particulars of the conduct of the investigation before the appellate court have not been given, but it appears that judgment in the case was reserved at the hearing of 13 April 1989. On 27 April 1989 the Court of Appeal upheld the appealed decision by a ruling filed with the court registry on 10 June 1989. ... ."

10. According to the information supplied to the European Court by the applicant, no appeal has been lodged in the Court of Cassation.

PROCEEDINGS BEFORE THE COMMISSION

11. Idrocalce S.r.l. lodged its application with the Commission on 1 April 1986. It complained of the length of the civil proceedings brought by it and relied on Article 6 para. 1 (art. 6-1) of the Convention.

12. On 11 May 1990 the Commission declared the application (no. 12088/86) 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*.

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* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 229-F 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 company claimed that its 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 26 September 1980 when the proceedings were instituted against Mr N. in the Taranto District Court; it ended on 10 June 1990 when the judgment of the Court of Appeal 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 invoked the conduct of the applicant company - which in particular had not requested that its case be dealt with more rapidly - and Mr N.'s bankruptcy, which led to the interruption of the proceedings.

18. The Court notes in the first place that this interruption was barely more than two months (17 February - 28 April 1983). The applicant, for its part, undoubtedly contributed to the slowness of which it complained by reserving the right to identify at a later stage the witnesses cited, by not appearing at the hearing of 1 December 1983 and by waiting from 11 May to 31 July 1987 before filing an appeal.

However, there were three long periods of stagnation at first instance, a total of twenty-nine months, between the hearings for the final submissions to the investigating judge and the trial hearings before the Taranto District Court (9 July 1981 - 26 March 1982, 1 March - 2 November 1984 and 9 January 1986 - 30 January 1987). In addition, the toing and froing between the investigating judge and the competent chamber clearly did not assist the progress of the case.

Furthermore, the sole witness identified by the applicant was heard only after sixteen months of hesitation (24 June 1982 - 17 February 1983 and 14 February 1985 - 3 October 1985). Yet this measure was a step in judicial proceedings supervised by a judge who was responsible for the preparation and the speedy conduct of the trial (see the Capuano v. Italy judgment of 25 June 1987, Series A no. 119, p. 13, para. 30). It is true that he asked the carabinieri to ensure that the person concerned appeared on 16 May 1985, but for reasons of which the Court is unaware they failed to carry out this order.

The participants in the Strasbourg proceedings have supplied the Court with very few details on the conduct of the appeal proceedings. The Court confines itself to noting that it took one and a half months for the judgment of the Lecce Court of Appeal to be filed with the registry (27 April - 10 June 1989); the judgment of the Taranto District Court had already taken nearly three months (13 February - 11 May 1987).

19. Accordingly, 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, for damage, a minimum of 25,000,000 Italian lire.

The Government considered that the company had not established the existence of a causal connection between the alleged violation and any pecuniary damage. As to non-pecuniary damage, a finding of a violation would constitute sufficient just satisfaction for the purposes of Article 50 (art. 50).

22. The Court shares this view.

B. Costs and expenses

23. Idrocalce S.r.l. also sought 8,040,000 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 the sum claimed in its entirety.

C. Interest

24. 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.

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, particularly as no such request was made by the applicant.

D. Implementation of legislative measures

26. The applicant requested finally that the present judgment should include a declaration ordering the Italian State to adopt legislation with a view to implementing all the necessary measures to ensure an effective protection of the human rights violated in this case - or at least a firm and explicit warning to this effect. The Delegate of the Commission did not make any observations on this point.

The Court points out, like the Government, that under the Convention it does not have jurisdiction to make such an order to a Contracting State (see in particular, mutatis mutandis, the Vocaturo v. Italy judgment of 24 May 1991, Series A no. 206-C, p. 33, para. 21).

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 this judgment constitutes in itself, as regards any non-pecuniary damage, sufficient just satisfaction for the purposes of Article 50 (art. 50);

3. Holds that the respondent State is to pay to the applicant, within three months, 8,040,000 (eight million and forty thousand) Italian lire for costs and expenses;

4. Dismisses the remainder of the applicant's claim.

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