

In the case of Lorenzi, Bernardini and Gritti 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 59/1991/311/382. 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 19 April 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. 13301/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by three Italian nationals, Mr Giovanni Lorenzi, Mr Ivano Bernardini and Mr Alessio Gritti, on 15 September 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 applicants stated that they did not wish to take part in the proceedings.

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, Gana, Barbagallo, Cifola, Pandolfelli and Palumbo, Arena, Pierazzini, Tusa, Cooperativa Parco Cuma, Serrentino, Cormio 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; 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; 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") and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). In accordance with the order made in consequence, the Registrar received the Government's memorial on 16 July 1991. 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 5 November the Commission lodged its observations on the claims for just satisfaction which the applicants had communicated to the Registrar on 31 May (Article 50 of the Convention; Rules 50 and 1(k), taken together) (art. 50) and on which the Government had already commented in their memorial.

#### AS TO THE FACTS

9. Mr Giovanni Lorenzi, Mr Ivano Bernardini and Mr Alessio Gritti are Italian nationals and reside at Bergamo. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 17-26 of its report):

"17. On 27 March 1975 the applicants took proceedings

before the Brescia District Court against the Minister of Public Works, seeking compensation for the damage caused by the flooding of a stream.

18. The investigation opened at the hearing of 19 May 1975, followed by hearings on 13 October 1975 (adjourned at the parties' request) and 22 December 1975, when the parties asked the District Court to rule on preliminary questions of jurisdiction. At the hearing of 15 March 1976, the parties made their final submissions regarding the aforesaid questions, and the case was referred to the competent chamber of the court. The hearing before it took place on 21 October 1976.

19. By interim decision of 25 November 1976, the Brescia District Court rejected the preliminary objections raised by the administration and declared itself competent to hear the case.

20. The investigation resumed at the hearing of 21 February 1977 and on 3 October 1977 the investigating judge called for an expert opinion. The expert appointed was sworn in at the hearing of 9 January 1978 and was given one hundred and twenty days to lodge the opinion. However, the time-limit was not complied with and the hearing of 5 June 1978 was therefore postponed to 13 November 1978 and then to 5 March 1979.

21. Twelve more hearings took place on 18 June 1979, 5 November 1979, 11 February 1980, 5 May 1980, 6 October 1980, 12 January 1981 (all adjourned at the parties' request), 27 April 1981 (adjourned by court order), 1 February 1982, 29 March 1982, 4 October 1982, 10 January 1983 (all adjourned at the parties' request) and 14 March 1983.

22. The parties made their final submissions at the hearing of 16 May 1983 and the case was referred to the competent court chamber, before which there was a hearing on 31 May 1984.

23. On 6 June 1984 the Brescia District Court ordered the Ministry of Public Works to compensate the applicants. The text of the judgment was lodged with the registry on 30 November 1984. On 20 May 1985 the Ministry of Public Works appealed against the judgment.

24. The proceedings before the Brescia Court of Appeal opened at the hearing of 9 October 1985, followed by the hearing of 6 November 1985. At the hearing of 22 January 1986, the parties made their final submissions, and at the close of the hearing on 26 November 1986 the Court of Appeal dismissed the appeal by the Minister of Public Works and increased the amount of damages payable to the applicants. The text of the decision was lodged with the registry on 20 January 1987.

25. On 30 April 1987 the Minister appealed from this decision. The hearing before the Court of Cassation took place on 9 March 1989. On that date, the court set aside the impugned decision after finding that the Regional Tribunal for Water Disputes had jurisdiction in the matter. The text of the decision was lodged with the registry on 15 May 1990.

26. No document produced indicates that the proceedings were reopened before the competent court."

## PROCEEDINGS BEFORE THE COMMISSION

10. The applicants lodged their application with the Commission on 15 September 1987. They complained of the length of the civil proceedings brought by them and relied on Article 6 para. 1 (art. 6-1) of the Convention.

11. On 11 May 1990 the Commission declared the application (no. 13301/87) admissible. In its report of 5 March 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\*.

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\* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 231-G 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 applicants claimed that their 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 27 March 1975 when the proceedings were instituted against the Minister of Public Works in the Brescia District Court. It ended, at the earliest, on 15 May 1990, when the judgment of the Court of Cassation was lodged with the registry, and, at the latest, on 15 May 1991, when the time-limit for resuming the proceedings before the competent court expired.

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 the complexity of the facts and the legal issues and the excessive workload of the relevant courts. In addition, the applicants had not requested that their case be examined more rapidly.

16. The case was a complex one, both as regards the facts and the law, in particular because of the questions of jurisdiction which the Brescia District Court and then the Court of Cassation had to determine. In addition, the parties, apparently by mutual agreement, caused numerous adjournments, which entailed a total delay of twenty-one months.

However, the investigating judge failed to display due diligence in exercising his power of supervision over the work of the expert (see the Capuano v. Italy judgment of 25 June 1987, Series A no. 119, p. 13, para. 30) and there were two periods of total inactivity in the proceedings before the District Court

(27 April 1981 - 1 February 1982) and before the Court of Appeal (22 January - 26 November 1986). Furthermore, the Minister of Public Works, an officer of the State, took more than six months to file an appeal against the judgment of 6 June 1984 (30 November 1984 - 20 May 1985). It is moreover hard to understand why this decision and the judgment of 9 March 1989 were not filed with the registry for nearly six and fourteen months respectively.

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 *Vocaturò v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 32, para. 17).

17. Accordingly, the Court cannot regard as "reasonable" the time which it took to make a finding that the court before which the case initially came lacked jurisdiction.

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. The applicants claimed in the first place 15,000,000 Italian lire each for damage.

The Court shares the Government's view that it has not been established that the violation found caused them pecuniary damage; as to non-pecuniary damage, a finding of a violation of Article 6 para. 1 (art. 6-1) constitutes in itself sufficient just satisfaction for the purposes of Article 50 (art. 50).

### B. Costs and expenses

20. The applicants also claimed 5,000,000 lire for costs and expenses incurred before the Commission.

Having regard to the evidence at its disposal and to its case-law in this field, the Court awards them 2,000,000 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 applicants.

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 present judgment constitutes in itself sufficient just satisfaction for the purposes of Article 50 (art. 50) in respect of non-pecuniary damage;
3. Holds that the respondent State is to pay to the applicants, within three months, 2,000,000 (two million) Italian lire for costs and expenses;
3. Dismisses the remainder of the applicants' claims.

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