

In the case of Maciariello 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 13/1991/265/336. 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. 12284/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Vittorio Maciariello, on 23 May 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 stated that he 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, Manifattura FL, Stefano, 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 12/1991/264/335; 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") 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 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 26 November the Government communicated to the Registrar information on the course of the domestic proceedings.

AS TO THE FACTS

9. Mr Vittorio Maciariello is an Italian national and resides at Ostia Lido (Rome). The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-20 of its report):

"16. On 31 May 1983 the applicant instituted divorce proceedings before the District Court of Santa Maria Capua Vetere.

17. The applicant and his wife appeared before the presiding judge of the court on 9 July 1983. Thereafter the case was

adjourned by court order on a number of occasions, namely at the hearings of 29 November 1983, 10 April 1984, 6 November 1984, 26 March 1985 and 17 September 1985 on the grounds of the investigating judge's transfer and the impossibility of replacing him at short notice.

18. The investigation actually began at the hearing of 28 January 1986. On that date the investigating judge called for the examination of certain witnesses. The following hearing was postponed by the court of its own motion from 8 May 1986 to 23 October 1986.

19. On 13 November 1986 the parties filed their final submissions and the case was referred to the competent division of the District Court.

20. Judgment was reserved at the hearing of 10 February 1987 and delivered on 19 February 1987, the text thereof being lodged with the registry on 14 March 1987.

21."

10. According to the information supplied by the Government to the European court, neither of the parties appealed.

PROCEEDINGS BEFORE THE COMMISSION

11. Mr Maciariello lodged his application with the Commission on 23 May 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. 12284/86) 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 230-A 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 31 May 1983 when the divorce proceedings were instituted. It ended at the latest on 14 March 1988 when the judgment of the Santa Maria Capua Vetere District Court became final (see the Pugliese (II) v. Italy judgment of 24 May 1991, Series A no. 206-A, p. 8, para. 16).

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 excessive workload of the District Court. In addition, the applicant had not requested that his case be dealt with more rapidly.

17. The Court observes that the proceedings were conducted at a normal pace before the relevant chamber of the District Court and that the State cannot be held responsible for the year which went by until the judgment became final. The same cannot be said of the earlier phase. As the Commission pointed out, more than two and a half years (9 July 1983 - 28 January 1986) elapsed before the actual beginning of the investigation, as the transfer of a judge had led to a series of adjournments ordered by the court of its own motion.

The Government pleaded the backlog of cases and the difficulty of replacing speedily the judge in question, 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).

18. Accordingly, the Court cannot regard as "reasonable" the lapse of time in the present case, in particular as special diligence is required in cases relating to civil status and capacity (see the *Bock v. Germany* judgment of 29 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)

19. 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

20. Mr Maciariello claimed 50,000,000 Italian lire for pecuniary and non-pecuniary damage; he did not seek the reimbursement of costs and expenses.

The Commission took the view that, in addition to a reparation for non-pecuniary damage, Mr Maciariello was entitled to compensation for any pecuniary damage sustained by him if he succeeded in establishing its existence and that of a causal connection with the violation found.

21. The evidence does not show that these conditions have been satisfied. On the other hand, the applicant undoubtedly suffered non-pecuniary damage, for which the Court, making an assessment on an equitable basis, awards him 2,000,000 lire.

B. Interest

22. 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.

23. 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 Mr Maciariello, within three months, 2,000,000 (two million) Italian lire for non-pecuniary damage;
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