

In the case of Nibbio 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 Thór Vilhjálmsson,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr B. Walsh,
Mr C. Russo,
Mr A. Spielmann,
Mr N. Valticos,
Mr S.K. Martens,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 28 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 28/1991/280/351. 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 of the Convention (art. 32-1, art. 47). It originated in an application (no. 12854/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mrs Silvana Nibbio, on 3 April 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 Gilberti,

Nonnis, Trotto, Borgese, Biondi, Macaluso, Monaco, Cattivera, Seri, Manunza, Gori, Casadio, Testa, Lestini, Covitti, Zonetti, Simonetti and Dal Sasso* should be heard by the same Chamber.

* Cases nos. 19/1991/271/342; 23/1991/275/346; 26/1991/278/349; 29/1991/281/352 to 32/1991/284/355; 34/1991/286/357; 35/1991/287/358; 37/1991/289/360; 45/1991/297/368; 52/1991/304/375 to 57/1991/309/380; 60/1991/312/383

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 Thór Vilhjálmsson, Mr F. Matscher, Mr J. Pinheiro Farinha, Mr L.-E. Pettiti, Mr B. Walsh, Mr N. Valticos and Mr S.K. Martens (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Subsequently, Mr A. Spielmann, substitute judge, replaced Mr Pinheiro Farinha, who had resigned and whose successor at the Court had taken up his duties before the hearing (Rules 2 para. 3 and 22 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 Government's memorial on 17 July 1991 and the applicant's memorial on 25 July. By a letter received on 22 September, the Secretary to the Commission informed the Registrar that the Delegate would submit oral observations.

6. On 29 August the Commission had 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 28 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;
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(c) for the applicant

Mr G. Angelozzi, avvocato,	Counsel,
Mr M. de Stefano, avvocato,	Adviser.

The Court heard addresses by Mr Raimondi and Mr Manzo for the Government, by Mr Frowein for the Commission and by Mr Angelozzi and Mr de Stefano for the applicant, as well as their answers to its questions.

8. On 14 October the Government had lodged their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50); on 5 November the Commission filed its observations on those claims.

AS TO THE FACTS

9. Mrs Silvana Nibbio is an Italian national and resides at Modene Grande. She is unemployed. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-19 of its report):

"16. On 20 October 1982 the applicant instituted proceedings against the Istituto Nazionale della Previdenza Sociale (INPS) in the Rome magistrate's court (pretore) to obtain a declaration of her right to a disability pension.

17. The investigation commenced at the hearing of 22 February 1983, when the magistrate's court called for a medical opinion, appointed the expert and summoned him to a hearing on 21 June 1983. That hearing did not take place, and the expert's failure to appear prompted the adjournment of the hearings of 3 April and 2 October 1984. At the next hearing (date not indicated in the records), the expert was sworn in and given sixty days as from 10 June 1985 to lodge the medical opinion. As the deadline was not met, the hearing of 6 November 1985 was postponed. On 30 November 1985 the medical opinion was lodged with the registry and at the close of the hearing on 12 February 1986 the magistrate's court ordered the INPS to pay the pension claimed, but ruled that the applicant's entitlement thereto ran from 1 June 1985 only and decided that the parties should pay their own costs. The text of the decision was lodged with the registry on 15 February 1986.

18. On 20 October 1986 the applicant appealed against the decision in so far as it fixed the commencement of her pension entitlement at a later date than the introduction of her application and ordered the parties to pay their own costs.

19. On 23 October 1986 the presiding judge of the Rome District Court fixed the hearing before the appropriate chamber of the court for 29 November 1988. However, the hearing was postponed to 1 June 1989 owing to the transfer of the investigating judge.

...

20."

10. According to the information provided to the European Court by the participants in the Strasbourg proceedings, the District Court dismissed the applicant's appeal on 1 June 1989. She then appealed to the Court of Cassation from the District Court's decision, which had been lodged with the registry on 7 October 1989. A hearing took place on 27 September 1991, but at the date of the adoption of the present judgment it is not known whether and how the Court of Cassation ruled.

PROCEEDINGS BEFORE THE COMMISSION

11. Mrs Nibbio lodged her application with the Commission on 3 April 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.

12. On 11 May 1990 the Commission declared the application (no. 12854/87) admissible. In its report of 15 January 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*.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 228-A 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. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

14. 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.

15. The period to be taken into consideration began on 20 October 1982 when the proceedings were instituted against the INPS in the magistrate's court. As far as the Court is aware, it has not yet ended since Mrs Nibbio's appeal is apparently still pending in the Court of Cassation.

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 excessive workload of the relevant courts and the latter's duty in principle to deal with cases in the order in which they were registered. In addition the applicant had never requested that the hearings be held at shorter intervals.

According to the applicant, the case was a simple one and her own conduct could have had only a negligible effect.

18. The Court stresses that special diligence is necessary in employment disputes, which include pensions disputes (see, *inter alia*, *mutatis mutandis*, the *Vocaturo v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 32, para. 17). Italy moreover acknowledged this by amending, in 1973, the special procedure laid down in this field and by introducing, in 1990, emergency measures intended to speed up the conduct of such proceedings.

The Government pleaded the backlog of cases in the relevant courts, 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 the same judgment, *ibid.*).

In this case the magistrate's court took more than three years to give judgment; it does not appear to have displayed the vigilance necessary to ensure that the expert appointed by it carried out his task within the period prescribed (see the *Capuano v. Italy* judgment of 25 June 1987, Series A no. 119, p. 13, para. 30).

The applicant did not appeal from the judgment of 12 February 1986 until the following 20 October, for which period the State is not responsible, but the appeal proceedings remained dormant for approximately twenty-five months. On 23 October 1986 the President of the Rome District Court set down the first hearing before the competent chamber for 29 November 1988 and it does not appear from the evidence that any investigative measures were taken prior to that hearing; the transfer of the investigating judge led to an additional delay of more than six months.

Finally, according to the information supplied by the participants in the Strasbourg proceedings, the Court of Cassation had still not given judgment at the date of the adoption of the present judgment.

19. In these circumstances and in view of what was at stake in the proceedings for Mrs Nibbio, the Court cannot regard as "reasonable" in this instance a lapse of time which is already more than nine years.

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 8,000,000 Italian lire for damage.

In the Government's contention, she sustained no pecuniary damage; she had moreover secured an order that her disability pension be paid to her with effect from 1 June 1985. As to non-pecuniary damage, a finding of a violation would constitute sufficient just satisfaction.

22. There is no evidence that the violation found caused Mrs Nibbio pecuniary damage. On the other hand, she must have suffered a degree of non-pecuniary damage for which the Court, making an assessment on an equitable basis, awards her 6,000,000 lire.

B. Costs and expenses

23. The applicant also sought 3,000,000 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 her 2,000,000 lire under this head.

C. Interest

24. Mrs Nibbio requested finally that interest be paid on the sums awarded, at the statutory rate in force in her country and in respect of the period running from the delivery of the present judgment to the payment of such sums by the Italian authorities.

The Commission invited the Court to fix for the Government - who did not give their opinion - a compulsory time-limit for executing the 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.

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 the applicant, within three months, 6,000,000 (six million) Italian lire for non-pecuniary damage and 2,000,000 (two 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 26 February 1992.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar