

In the case of Pierazzini 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 43/1991/295/366. 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. 13265/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mrs Paola Pierazzini, on 3 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 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, Gana, Barbagallo, Cifola, Pandolfelli and Palumbo, Arena, 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 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 42/1991/294/365; 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 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 memorial of the applicant - whom the President had authorised to use the Italian language (Rule 27 para. 3) - on 15 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 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 President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 29 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;

(c) for the applicant

Mr C. Borghi, avvocato, Counsel.

The Court heard addresses by Mr Raimondi and Mrs Passannanti for the Government, by Mr Frowein for the Commission and by Mr Borghi for the applicant.

8. On 10 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 Paola Pierazzini is an Italian national and resides in Livorno. She is a housewife. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 16-21 of its report):

"16. On 27 December 1983 the applicant took out a writ against Mr C. and Mrs X, Mrs Y and Mrs Z before the Tempio Pausania District Court, asking for a settlement in respect of holdings in two companies which she claimed to have inherited following the death of her father, a joint owner of the said companies.

17. After two postponements by the District Court of its own motion on 1 March and 7 June 1984, the case was adjourned indefinitely because of the transfer of the investigating judge. Pending the appointment of the new investigating judge, the applicant applied on 21 October 1984 for the preventive attachment of Mr C.'s property to the amount of 150,000,000 Italian lire. The application was rejected by the presiding judge of the District Court on 18 April 1985 on the ground that he no longer had jurisdiction in the case as the new investigating judge had been appointed.

18. The investigation commenced at the hearing of 22 May 1986, followed by hearings on 13 November 1986, 18 December 1986, 12 January 1987 (adjourned as the defendants' counsel could not appear) and 22 January 1987. Thereafter, the examination of the case was again suspended because of the transfer of the investigating judge.

19. The hearing before the new investigating judge did not take place until 9 June 1988. At the hearing of 5 July 1988, the applicant re-applied for an attachment and requested an expert's assessment of the assets of the companies concerned. The investigating judge reserved his decision.

20. On 3 March 1989 he dismissed the application for an attachment but directed that the requested assessment be made. The expert appointed was sworn in at the hearing of 20 April 1989 and given sixty days to lodge the report.

21. As this time-limit was not complied with, the hearing of 12 October 1989 was adjourned to 16 November 1989 (on which date the applicant requested and received permission to procure certain bank statements), then to

1 March 1990 and lastly to 15 November 1990."

10. According to the information supplied to the European Court by the Government and the applicant, that last hearing did not take place either, but the expert, who in the meantime had obtained an extension of the time-limit, submitted his report on that date. In addition, on 6 June 1991 the investigating judge suspended the proceedings on account of the death of Mr C.

PROCEEDINGS BEFORE THE COMMISSION

11. Mrs Pierazzini lodged her application with the Commission on 3 September 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. 13265/87) 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 231-C 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 27 December 1983, when the proceedings were instituted against the defendants in the Tempio Pausania District Court. It has not yet ended as that court has still to give judgment.

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 - who had not requested that her case be examined more rapidly - and the transfer of two investigating judges.

18. The Court recognises that the respondent State is not in

principle answerable for certain adjournments which were requested by the applicant and not ordered by the judicial authorities of their own motion.

It notes nevertheless, like the Commission, that there were two periods of stagnation for which the State was entirely responsible. These were from 27 December 1983 to 22 May 1986 and from 22 January 1987 to 9 June 1988, a total of more than three years and nine months.

The Government pleaded the transfer of the judges, 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 *Vocaturo v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 32, para. 17). In addition, the expert did not submit his report until 15 November 1990, a good ten months after the expiry of the prescribed time-limit. He was acting in the context of judicial proceedings supervised by the judge; the latter remained responsible for the preparation of the case 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).

19. In sum, the Court cannot regard as "reasonable" in this instance a lapse of time already amounting to more than eight 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. Mrs Pierazzini claimed in the first place 319,950,000 Italian lire for pecuniary and non-pecuniary damage.

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

In the Government's contention, there was no pecuniary damage because the case was still pending in the national courts; as to non-pecuniary damage, the finding of a violation would constitute sufficient just satisfaction for the purposes of Article 50 (art. 50).

22. The Court agrees with the Government on the first point, but considers that the applicant must have suffered non-pecuniary damage in respect of which, making an assessment on an equitable basis, it awards her 15,000,000 lire.

B. Costs and expenses

23. The applicant also sought the reimbursement of 11,500,000

lire for the costs and expenses which she claimed to have 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 8,000,000 lire under this head.

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.

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, 15,000,000 (fifteen million) Italian lire for non-pecuniary damage and 8,000,000 (eight 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