

In the case of F.M. 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. Bernhardt, President,  
Mr Thór Vilhjálmsson,  
Mr F. Matscher,  
Mr L.-E. Pettiti,  
Mr C. Russo,  
Mr N. Valticos,  
Mr S.K. Martens,  
Mrs E. Palm,  
Mr F. Bigi,

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

Having deliberated in private on 21 September 1992,

Delivers the following judgment, which was adopted on that date:

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Notes by the Registrar

\* The case is numbered 10/1992/355/429. 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 by the European Commission of Human Rights ("the Commission") on 13 April 1992, 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. 12784/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mrs F.M., on 2 March 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. On 25 April 1992 the President of the Court decided that, pursuant to Rule 21 para. 6 of the Rules of Court and in the interests of the proper administration of justice, this case and the cases of Pizzetti, De Micheli, Salesi, Trevisan, Billi and M. v. Italy\* should be heard by the same Chamber.

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\* Cases nos. 8/1992/353/427; 9/1992/354/428; 11/1992/356/430 to 14/1992/359/433

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3. 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 L.-E. Pettiti, Mr N. Valticos, Mr S.K. Martens, Mrs E. Palm and Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. 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 procedure (Rules 37 para. 1 and 38). On 27 July 1992 the Government informed the Registrar that they wished to refer the Court to their observations before the Commission.

5. On 13 April the Registrar had sent to the applicant the enquiry provided for in Rule 33 para. 3 (d). On 17 July 1992 Mrs M.'s lawyer informed him that his client had died and that he had not succeeded in discovering any heirs. Consequently, the President instructed the Registrar to obtain the opinion of the Government and the Delegate of the Commission regarding the possibility of striking the case out of the list (Rule 49 para. 2). Their replies reached the registry on 3 September and 20 August respectively.

6. The Chamber, sitting on 21 September and presided over by the Vice-President of the Court, Mr R. Bernhardt, in place of Mr Ryssdal, who was unable to take part in the further consideration of the case (Rule 21 para. 5, second sub-paragraph), decided to dispense with the hearing set down for that date. It had found that the conditions for such a derogation from the usual procedure were satisfied (Rules 26 and 38).

#### AS TO THE FACTS

7. Until her death Mrs F.M. lived at Pomezia (Rome province). The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 15-17 of its report):

"15. On 5 February 1986, the applicant, a disabled civilian, instituted proceedings against the Minister of the Interior before the Rome magistrate's court (pretore) ... ."

[She sought payment under Law no. 18 of 11 February 1980 of an attendance allowance (indennità di accompagnamento) which the Latium social security authorities had refused her.]

"16. The taking of evidence began at the hearing of 14 April 1986 and closed, after the medical report ordered by the judge had been submitted, at the hearing of 13 October 1986. On that date the Rome magistrate's court ordered the Minister of the Interior to pay the allowance claimed. The decision was deposited with the registry on 19 December 1986.

17. On 10 January 1987 the Minister of the Interior appealed against the above decision and, on 15 January 1987, the President of the Rome District Court arranged for the appeal to be heard by the competent division of the court on 25 January 1989. On that date the appeal by the Minister of the Interior was dismissed."

#### PROCEEDINGS BEFORE THE COMMISSION

8. Mrs F.M. lodged her application with the Commission on 2 March 1987. She complained of the length of the proceedings instituted by her and relied on Article 6 para. 1 (art. 6-1) of the Convention.

9. On 2 July 1990 the Commission declared the application (no. 12784/87) admissible. In its report of 20 February 1992 (made under Article 31) (art. 31), it expressed the opinion, by thirteen votes to eight, that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion and the separate opinions contained in the report 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 245-A 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

10. By a letter of 17 July 1992, Mr Angelozzi, the applicant's lawyer before the Commission, informed the Registrar that he had learned of Mrs M.'s death and that it had proved impossible to discover any heirs.

The Government were consulted and expressed the view that the case should be struck out of the list pursuant to Rule 49 para. 2 of the Rules of Court.

The Delegate of the Commission did not submit any observations.

11. According to Rule 49 para. 2:

"When the Chamber is informed of a friendly settlement, arrangement or other fact of a kind to provide a solution of the matter, it may, after consulting, if necessary, the Parties, the Delegates of the Commission and the applicant, strike the case out of the list."

The applicant's death and the failure of the attempts made to discover any heirs constitute facts "of a kind to provide a solution of the matter" (see the *Macaluso and Manunza v. Italy* judgments of 3 December 1991, Series A no. 223-A and B).

In addition, the Court discerns no reason of ordre public (public policy) for continuing the proceedings (Rule 49 para. 4). In this connection it points out that in a number of previous cases it has had occasion to review the "reasonableness" of the length of judicial proceedings in various Contracting States, including Italy. In so doing it specified the nature and the extent of the obligations arising in this context from Article 6 para. 1 (art. 6-1) of the

Convention. Furthermore, the cases of Pizzetti, De Micheli, Salesi, Trevisan, Billi, M., Scuderi, M.R. and Massa v. Italy are still pending before it. These are cases which raise similar questions and in which the Court will shortly give judgment.

Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of the Rules of Court on 23 September 1992.

Signed: Rudolf BERNHARDT  
President

Signed: Marc-André EISSEN  
Registrar