

In the case of Billi 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,

Having deliberated in private on 29 October 1992 and 2 February 1993,

Delivers the following judgment, which was adopted on the last-mentioned date:

Notes by the Registrar

* The case is numbered 13/1992/358/432. 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 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. 15118/89) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mrs Emma Billi, on 20 January 1989.

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; the President of the Court gave her leave to use the Italian language and to present her own case (Rules 27 para. 3 and 30 para. 1, second sentence).

3. On 25 April 1992 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 Pizzetti, De Micheli, F.M., Salesi, Trevisan and Messina v. Italy* should be heard by the same Chamber.

* Cases nos. 8/1992/353/427 to 12/1992/357/431 and 14/1992/359/433.

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 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).

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 on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 17 June 1992. By a letter of 23 July the Government stated that they wished to refer the Court to their observations before the Commission. The Delegate of the Commission did not lodge written observations.

6. On 26 May the Chamber had decided to dispense with a hearing, having found that the conditions for such a derogation from the usual procedure were satisfied (Rules 26 and 38).

7. On 3 September the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

8. As Mr Ryssdal was unable to attend the deliberations on 29 October, he was replaced as President of the Chamber by Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 5, second sub-paragraph).

9. On 20 October and 8 November 1992 respectively the Government and the Commission filed their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50).

10. On 12 November the Government communicated to the Registrar certain additional information concerning the facts of the case.

AS TO THE FACTS

11. Mrs Emma Billi resides at Genzano di Roma. 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. By writ of summons dated 3 June 1969, served on 7 June 1969, the municipality of Perugia instituted proceedings before the Perugia District Court against SAI, a friendly society which organised mutual assistance between employees and pensioners. The SAI was set up to grant subsidies or loans to its members. It was financed by specific contributions from members and by means of

deductions from the pay of wage-earning members.

The municipality of Perugia accused the SAI of misappropriating large sums of money belonging to it through the accountant who doubled up as secretary-treasurer of the friendly society and chief accountant of the municipality. On 22 May 1969 the President of the court had ordered the interim seizure of the immovable property belonging to the members of the SAI's governing body, which then included Milziade Billi, the applicant's father. Mr Billi died during the trial and the applicant, as his heir, sought leave to be joined to the proceedings at the hearing of 25 January 1973. On 22 February 1973 the investigating judge ordered an accountant's report and arranged for a hearing to be held on 6 April 1973 so that the expert could take the oath. On 6 April 1973 the expert was given six months to draw up his report and the next hearing was arranged for 15 November 1973. After that date the proceedings were adjourned several times, sometimes at the request of the expert, who asked for more time to complete his report on 28 February 1974, 21 May 1974 and 8 October 1974, and sometimes (on 15 November 1973, 2 May 1974 and 17 October 1974) at the request of the parties' lawyers, who were waiting for the expert's report to be filed.

17. On 19 December 1974 the investigating judge ordered a further expert opinion. On 20 February 1975 the second expert was given ninety days to draw up his report. The investigating judge later granted the expert's request for an extension until 26 September 1975. The next two hearings were adjourned at the request of counsel, the first pending the deposit of the expert's report (19 June 1975), the second to allow them time to study the report (22 January 1976).

18. The next hearing, initially arranged for 15 June 1976, was first adjourned until 14 December 1976 and then until 21 February 1978 to give counsel time to file their final submissions. On 21 February 1978 the case was set down for trial by the District Court. However, on 12 January 1979 the proceedings were interrupted because an heir of one of the defendants, who had been represented in the proceedings up to that time by his guardian, reached his majority. Counsel for the municipality asked for the proceedings to be reopened, and on 17 April 1979 the investigating judge arranged for the next hearing to be held on 19 October 1979. On that date the case was adjourned until 25 January 1980, as the file had been mislaid. Subsequent adjournments, until 30 June 1980, 31 October 1980 and 3 April 1981, were caused by the transfer of the investigating judge to other duties or by the absence of the judge dealing with the case.

19. On 3 April 1981, when in the opinion of counsel the case was ready for trial, the Perugia District Court decided that a further expert opinion was necessary. In a decision dated 19 May 1981 the court appointed an investigating judge, who, on 13 July 1981, instructed the expert to elucidate a number of points raised by counsel in their final submissions.

20. There was then a series of adjournments (on 16 December 1981, 10 February 1982, 21 April 1982, 14 June 1982, 20 September 1982 and 16 March 1983) caused by the need to wait for the additional expert report to be filed. On 1 October 1982 the investigating judge granted

the expert an extension of the time-limit. The next two hearings were adjourned, at counsel's request, because the expert had still not filed his report. After repeatedly summoning the expert to produce his report, and after receiving a letter from the expert dated 8 March 1984 asking for a different expert to be appointed, the investigating judge appointed another expert, who took the oath on 14 May 1984.

21. Further adjournments followed on 28 November 1984 and 22 April 1985 pending the filing of the expert report. On 29 May 1985 the report was filed and counsel again requested an adjournment to give them time to study it. On 18 September 1985 the investigating judge asked the registry to supply the criminal file, since the facts complained of by the municipality had in the meantime led to criminal proceedings. A number of adjournments then followed (on 13 November 1985, 18 December 1985, 3 December 1986, 27 January 1987 and 5 February 1987) for the filing by counsel of their final submissions. On 21 July 1986 the President of the court had appointed a new investigating judge. On 5 February 1987 the investigation was closed and the case set down for trial by the court on 9 April 1988. In a judgment dated 14 May 1988, deposited with the registry on 7 November 1988, the Perugia District Court rejected the municipality's claims."

12. According to the information supplied by the Government (see paragraph 10 above), no appeal was filed against this decision by the applicant, in relation to whom it became final on 7 November 1989.

PROCEEDINGS BEFORE THE COMMISSION

13. Mrs Billi lodged her application with the Commission on 20 January 1989. Relying on Article 6 para. 1 (art. 6-1) of the Convention, she complained of the length of the civil proceedings in question.

14. On 8 July 1991 the Commission declared the application (no 15118/89) admissible. In its report of 9 December 1991 (made under 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 257-G of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

15. The applicant alleged that the civil action concerning her had not been tried within a "reasonable time" as required by 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 contested this claim, whereas the Commission accepted it.

16. The period to be taken into consideration did not begin on 25 January 1973, the date on which Mrs Billi joined the proceedings as the heir to her father, Mr Milziade Billi, but only on 1 August 1973 when the Italian declaration accepting the right of individual petition (Article 25) (art. 25) took effect. In order to determine the reasonableness of the length of time which elapsed after that date, regard must be had however to the state of the case at that time (see, *inter alia*, the Pandolfelli and Palumbo v. Italy judgment of 27 February 1992, Series A no. 231-B, p. 19, para. 14).

The period in question ended on 7 November 1989.

17. The reasonableness of the length of proceedings is to be determined 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.

18. The Government pleaded the complexity of the facts of the dispute, the number of those taking part in the proceedings and the difficulty of drawing up the expert reports which the court needed to give judgment. They also cited the conduct of the parties - including the applicant -, who had requested adjournments throughout the proceedings.

Mrs Billi complained of the Italian State's failure to take appropriate action in the field of the administration of justice.

19. Like the Commission, the Court notes in the first place that the case was a complex one: beyond any doubt the necessity of an expert opinion and the presence of several defendants rendered the proceedings more cumbersome and slowed them down. It should however be stressed that the majority of the requests by the parties for adjournments were made on the justifiable ground that they were waiting for the expert's report to be filed.

In addition, as the Commission correctly pointed out, more than twelve years elapsed between the hearing at which the first expert took the oath (6 April 1973) and the date on which the second lodged his report (29 May 1985). In this connection, the Court observes that they were both working in the context of judicial proceedings supervised by a judge, who remained responsible for the preparation and the speedy conduct of the trial (see, *mutatis mutandis*, the above-mentioned Pandolfelli and Palumbo judgment, p. 19, para. 17).

20. Accordingly, and having regard in addition to the fact that the case was heard at only one level of jurisdiction, the Court cannot consider "reasonable" the period of over sixteen years which elapsed in the proceedings in issue.

In conclusion, there has been a violation of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

21. Under 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."

22. The applicant claimed 150,000,000 Italian lire for pecuniary damage and the same sum again for non-pecuniary damage. She included her costs and expenses in the second amount. The pecuniary damage had stemmed from the attachment of all the applicant's moveable and immoveable property, a situation which had lasted throughout the proceedings.

23. The Government denied that there had been any pecuniary damage; in any event there was no evidence establishing it.

24. According to the Delegate of the Commission, Mrs Billi had sustained clear and substantial pecuniary damage. She had provided sufficient evidence to establish that the damage claimed was real and the sums which she sought were in no way excessive. As regards the non-pecuniary damage invoked, a mere finding of a violation would not constitute sufficient reparation.

25. On the basis of the documentary evidence adduced and in particular the evidence concerning the details of the attachment and sale of Mr Milziade Billi's property (judgment of the Perugia District Court of 14 May 1988 and applicant's memorial), the Court awards to the applicant 20,000,000 lire, to cover all the heads of claim.

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, 20,000,000 (twenty million) Italian lire for 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 26 February 1993.

Signed: Rudolf BERNHARDT
President

Signed: Marc-André EISSEN
Registrar