

In the case of De Micheli 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 9/1992/354/428. 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. 12775/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mrs Roberta De Micheli, on 27 February 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 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,

F.M., Salesi, Trevisan, Billi and Messina v. Italy* should be heard by the same Chamber.

* Cases nos. 8/1992/353/427 and 10/1992/355/429 to 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's lawyer on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received, on 16 July 1992, the memorial of the applicant - whom the President had given leave to use the Italian language (Rule 27 para. 3). By a letter of 21 May the Government had stated that they wished to refer the Court to their observations before the Commission.

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 1992 the Government had filed their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50). The latter's reply reached the registry on 6 November 1992 and the comments of the Delegate of the Commission on 8 November.

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 Roberta De Micheli resides in Rome. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 17-23 of its report):

"17. On 25 August 1986 the applicant was served with an injunction granted to the company Z. by the President of the Udine District Court on 29 July 1986 ordering her to pay the company the sum of ITL 700 million (approximately 3,500,000 French francs). The order contained an immediate enforcement clause. The applicant appealed against the order, instituting proceedings against the

company Z. before the Udine District Court through a writ of summons served on 16 September 1986.

18. The case was placed on the list on an unspecified date.

The investigation began at the hearing of 20 October 1986 and continued until that of 21 November 1988.

19. ... on 27 October 1986, the investigating judge rejected the request made by the applicant at the first hearing that immediate enforcement of the order to pay be suspended, and adjourned examination of the case until 8 June 1987.

20. On 27 January 1987 the applicant then asked the investigating judge to arrange a hearing on an earlier date; this was refused on 3 February 1987, on the ground of the court's excessive case-load.

21. Following the hearing of 8 June 1987, a hearing was arranged for 11 January 1988 so that the parties could make their final submissions. However, it was not possible to hold the hearing on that date because, in the meantime, the investigating judge had been transferred. It was finally held on 21 November 1988, i.e. more than one year and five months later.

22. Following the above hearing, the case was referred to the competent division of the court to be examined at the hearing of 22 June 1989. However, the division in question sent the file back to the investigating judge for further investigation (discovery of documents). The documents required were produced at the hearing of 11 December 1989, i.e. nearly six months later. The court then reserved judgment.

23. In a judgment dated 25 October 1990, deposited with the registry on 17 December 1990, the Udine District Court annulled the [impugned] injunction ..."

12. According to the information supplied by the Government (see paragraph 10 above), that decision became final on 25 March 1991.

PROCEEDINGS BEFORE THE COMMISSION

13. Mrs De Micheli lodged her application with the Commission on 27 February 1987. Relying on Article 6 para. 1 (art. 6-1) of the Convention, she complained of the length of the civil proceedings instituted by her.

14. On 8 July 1991 the Commission declared the application (no 12775/87) admissible. In its report of 13 January 1992 (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-D 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 her civil action 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 ..."

16. The period to be taken into consideration began on 16 September 1986, when the Z. company was summonsed before the Udine District Court. It ended on 25 March 1991, on which date the judgment of that court became final.

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 invoked the backlog of cases in the competent court; they attributed this in part to the frequent transfers of judges and to the relative difficulty of replacing them.

19. The applicant attacked the Italian State's failure to take appropriate action in the field of the administration of justice. She complained of the long periods during which the judicial authorities had remained inactive.

20. The Court finds in the first place that the case was not a complex one, which moreover the Government acknowledged. It then observes, like the Commission, that there were two periods during which the proceedings stagnated, namely from 8 June 1987 to 21 November 1988 and from 11 December 1989 to 25 October 1990 (see paragraph 11 above, nos. 21-23).

It notes in addition that during the first of the above-mentioned periods, the applicant unsuccessfully requested that the date of the hearing be brought forward (see paragraph 11 above, no. 20).

As regards the argument based on the excessive workload of the competent court, it should be recalled that Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements (see, among many other authorities, the *Tusa v. Italy* judgment of 27 February 1992, Series A no. 231-D, p. 41, para. 17).

21. Accordingly, having regard to what was at stake in the dispute for the applicant and to the fact that the case was heard at only one level of jurisdiction, the Court cannot consider "reasonable" the time 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)

22. 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."

A. Damage

23. Mrs De Micheli sought 950,000,000 Italian lire as compensation for damage. This sum represented the amount that her husband, Mr Centola, paid to the Z. company to avoid his undertaking's bankruptcy and the auctioning-off of all his property. She maintained that there was a causal connection between the damage deriving from this payment and the alleged violation.

In the alternative, she claimed 428,000,000 lire.

24. The Government stressed that the sum in question had been paid not by the applicant herself but by her husband, in accordance with an agreement concluded on 21 December 1987 between him and the above-mentioned company. Any pecuniary damage stemmed from that agreement and not from the allegedly excessive duration of the proceedings.

Furthermore the applicant could have requested compensation under Article 96 of the Italian Code of Civil Procedure on the basis of the decision quashing the payment order.

The Government further contended that a finding of a violation would constitute sufficient just satisfaction for any non-pecuniary damage which the applicant might have sustained.

25. The Delegate of the Commission accepted the Government's argument, but nevertheless took the view that the applicant had sustained pecuniary and non-pecuniary damage because her financial circumstances had suffered directly on account of those of her husband.

26. The Court considers that the evidence does not disclose any pecuniary damage deriving directly from the failure to conduct the proceedings within a "reasonable time". The agreement of 21 December 1987 entailed acknowledgement of the debt which the Z. company was trying to recover. It was signed by Mr Centola in his own name and stipulated that it was to remain valid even in the event of the annulment of the payment order of 29 July 1986, the execution of which the investigating judge had moreover refused to stay on 27 October 1986 (see paragraph 11 above, nos. 17 and 19).

On the other hand, the proceedings in issue caused the applicant non-pecuniary damage for which it is appropriate to award her 25,000,000 lire.

B. Costs and expenses

27. The applicant also sought 4,271,300 lire in respect of costs and expenses referable to the proceedings before the Convention organs.

The Government considered that this claim was founded on provisions, concerning lawyer's fees, which were part of the Italian domestic legal system and which did not therefore apply in the present case. However, they left the matter to be determined by the Court.

28. The Court shares the view of the Delegate of the Commission that the costs in question were genuinely and necessarily incurred and were reasonable as to quantum, and accordingly orders their reimbursement to the applicant in full.

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, 25,000,000 (twenty-five million) Italian lire for non-pecuniary damage and 4,271,300 (four million two hundred and seventy-one thousand three hundred) 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 1993.

Signed: Rudolf BERNHARDT
President

Signed: Marc-André EISSEN
Registrar