COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF PELLEGRINI v. ITALY

(Application no. 30882/96)

JUDGMENT

STRASBOURG

20 July 2001

FINAL

20/10/2001

In the case of Pellegrini v. Italy,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr B. CONFORTI,
Mr G. BONELLO,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 10 July 2001,

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

PROCEDURE

1. The case originated in an application (no. 30882/96) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mrs Maria Grazia Pellegrini ("the applicant"), on 15 December 1995.

2. The applicant was represented by Ms S. Mirabella, a lawyer practising in Rome. The Italian Government ("the Government") were represented by their Agent, Mr U. Leanza, Head of the Diplomatic Legal Service at the Ministry of Foreign Affairs, assisted by Mr V. Esposito, co-Agent.

3. The applicant alleged that proceedings before the Italian courts for a declaration that a judgment of the Vatican courts was enforceable had been unfair (Article 6 § 1 of the Convention).

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 6 April 2000 the Chamber decided, in principle, to relinquish jurisdiction in favour of the Grand Chamber.

7. On 12 April 2000 the applicant filed an objection to relinquishment under Rule 72 § 2.

8. By a decision of 29 June 2000, the Chamber declared the application admissible [*Note by the Registry.* The Court's decision is obtainable from the Registry].

9. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*). The applicant submitted written comments on the Government's observations.

10. On 16 November 2000, in accordance with Rule 61 § 3, the President gave the Centre for Advice on Individual Rights in Europe ("the AIRE Centre") leave to submit written comments on certain aspects of the case. Those comments were received on 18 December 2000. On 23 January 2001 the Government submitted observations in reply to those of the AIRE Centre.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. On 29 April 1962 the applicant married Mr A. Gigliozzi in a religious ceremony which was also valid in the eyes of the law (*matrimonio concordatario*).

1. Judicial separation proceedings

12. On 23 February 1987 the applicant petitioned the Rome District Court for judicial separation.

13. In a judgment dated 2 October 1990 the District Court granted her petition and also ordered Mr Gigliozzi to pay the applicant maintenance (*mantenimento*) of 300,000 Italian lira per month.

2. Proceedings to have the marriage annulled

14. In the meantime, on 20 November 1987, the applicant was summoned to appear before the Lazio Regional Ecclesiastical Court of the Rome Vicariate on 1 December 1987 "to answer questions in the Gigliozzi-Pellegrini matrimonial case".

15. On 1 December 1987 the applicant went alone to the Ecclesiastical Court without knowing why she had been summoned to appear. She was informed that on 6 November 1987 her husband had sought to have the marriage annulled on the ground of consanguinity (the applicant's mother and Mr Gigliozzi's father being cousins). She was questioned by the judge and stated that she had known of her consanguineous relationship with Mr Gigliozzi but did not know whether, at the time of her marriage, the priest had requested a special dispensation (*dispensatio*).

16. In a judgment delivered on 10 December 1987 and deposited with the registry on the same day, the Ecclesiastical Court annulled the marriage on the ground of consanguinity. The court had followed a summary procedure (*praetermissis solemnitatibus processus ordinarii*) under Article 1688 of the Code of Canon Law. That procedure is followed where, once the parties have been summoned to appear and the *defensor vinculis* (defender of the institution of marriage) has intervened, it is clear from an agreed document that there is a ground for annulling the marriage.

17. On 12 December 1987 the applicant was notified by the registry of the Ecclesiastical Court that on 6 November 1987 the court had annulled the marriage on the ground of consanguinity.

18. On 21 December 1987 the applicant lodged an appeal with the Roman Rota (*Romana Rota*) against the Ecclesiastical Court's judgment. She submitted first that she had never received a copy of the judgment in question and complained that the court had not heard her submissions until 1 December 1987, which was after it had delivered its judgment of 6 November 1987. The applicant also alleged a breach of her defence rights and of the adversarial principle on account of the fact that she had been summoned to appear before the Ecclesiastical Court without being informed in advance either of the application to have the marriage annulled or the reasons for that application. She had therefore not prepared any defence and, furthermore, had not been assisted by a lawyer.

19. On 26 January 1988 the registry of the Ecclesiastical Court informed the applicant that there had been a clerical error in the notification sent to her on 12 December 1987 and that the judgment was dated 10 December 1987.

20. On 3 February 1988 the *defensor vinculis* submitted observations to the effect that the applicant "had acted correctly in appealing against the judgment" (*la convenuta aveva agito giustamente facendo appello contro la sentenza*) of the Lazio Court. Accordingly, in a summons of 9 March 1988 the reporting judge of the Rota summoned the parties and the *defensor vinculis* to appear.

21. On 10 March 1988 the applicant was informed that the Rota would examine her appeal on 13 April 1988 and that she had twenty days in which to submit observations. On 29 March 1988 the applicant, who was still unassisted by a lawyer, submitted her observations, in which she complained, *inter alia*, that she had not had adequate time and facilities for the preparation of her defence. She gave details of the financial arrangements between herself and her ex-husband and stressed that the annulment of the marriage would have substantial repercussions on her ex-husband's obligation to pay her maintenance, which was her only source of income.

22. In a judgment of 13 April 1988, which was deposited with the registry on 10 May 1988, the Rota upheld the decision annulling the

marriage on the ground of consanguinity. The applicant received only the operative provisions of the judgment, her request for a full copy of it having been refused.

23. On 23 November 1988 the Rota informed the applicant and her ex-husband that its judgment, which had become enforceable by a decision of the superior ecclesiastical review body, had been referred to the Florence Court of Appeal for a declaration that it could be enforced under Italian law (*delibazione*).

3. Proceedings to have the judgment declared enforceable

24. On 25 September 1989 the applicant's ex-husband summoned her to appear before the Florence Court of Appeal.

25. The applicant appeared before that court and requested it to set aside the Rota's judgment for infringing her defence rights. She stated that she had not received a copy of the application to have the marriage annulled and had been unable to examine the documents filed in the proceedings, including the observations of the *defensor vinculis.* She requested the court to refuse to declare the Rota's judgment enforceable, submitting that, in any event, the proceedings would have to be reopened in order to allow her to examine and reply to the documents filed in the proceedings under canon law. She requested, in the alternative, in the event that the court should declare the judgment enforceable, that her ex-husband be ordered to pay her monthly maintenance for the rest of her life.

26. In a judgment of 8 November 1991, deposited with the registry on 10 March 1992, the Florence Court of Appeal declared the judgment of 13 April 1988 enforceable. The court found that the opportunity given to the applicant on 1 December 1987 to answer questions had been sufficient to ensure that the adversarial principle had been complied with and that, moreover, she had freely chosen to bring the proceedings before the Rota and had been able to exercise her defence rights in those proceedings "irrespective of the special features of proceedings under canon law". The court went on to hold that it did not have jurisdiction to award her maintenance "for the rest of her life"; as far as a possible award of interim maintenance (*assegno provvisorio*) was concerned, which was a provisional arrangement, the court pointed out that the applicant had not in any event proved that she needed the money.

27. The applicant appealed on points of law, repeating her submission that her defence rights had been infringed in the proceedings before the ecclesiastical courts. She submitted, among other things, that the Court of Appeal had omitted to take account of the following features of the proceedings before the ecclesiastical courts: the parties cannot be represented by a lawyer; the respondent is not informed of the reasons relied on by the petitioner for having the marriage annulled until he or she is questioned; the *defensor vinculis*, who acts as the respondent's guardian, is

not obliged to lodge an appeal; an appeal must be lodged personally by the party in question and not by their lawyer; the ecclesiastical court is not particularly autonomous. She repeated that she had not been informed in detail of the application to have the marriage annulled or of the possibility of being assisted by a lawyer. Furthermore, the proceedings at first instance had been too quick. The applicant also criticised the fact that the Court of Appeal appeared to have omitted to examine the case file relating to the proceedings before the ecclesiastical courts, which might have yielded evidence in the applicant's favour. Besides that, the applicant submitted that she had shown herself to be in financial need and was therefore entitled to maintenance.

28. During the proceedings the applicant had requested the registry of the Ecclesiastical Court to give her a copy of the documents filed in the annulment proceedings in order to produce them before the Court of Cassation, but the court clerk had refused to grant her request on the ground that the parties could receive only the operative provisions of the judgment, "which should be sufficient to allow them to exercise their defence rights".

29. In a judgment of 10 March 1995, deposited with the registry on 21 June 1995, the Court of Cassation dismissed the appeal. It held, first of all, that the adversarial principle had been complied with in the proceedings before the ecclesiastical courts; moreover, there was case-law authority to support the view that while the assistance of a lawyer was not a requirement under canon law, it was not forbidden: the applicant could therefore have taken advantage of that possibility. The court also held that the fact that the applicant had had a very short time in which to prepare her defence in November 1987 did not amount to an infringement of her defence rights because she had not indicated why she had needed more time. With regard to the request for maintenance, the Court of Cassation held that the Court of Appeal could not have decided otherwise, given that the applicant had mistakenly referred to maintenance "for the rest of her life" and, furthermore, had failed to show that she was entitled to maintenance and needed it. The Court of Cassation did not rule on the fact that the case file relating to the proceedings under canon law had not been examined by the Court of Appeal.

4. Proceedings for payment of maintenance and for joint title to property

30. From June 1992 the applicant's ex-husband ceased paying her maintenance. The applicant therefore began enforcement proceedings for payment of the maintenance by serving notice (*precetto*) on him to pay it. On 6 November 1994 her ex-husband lodged an objection with the Viterbo Court, which, in a judgment of 14 July 1999, upheld his objection and ruled that he no longer had to pay maintenance because the Florence Court of Appeal had declared that the decision annulling the marriage was

enforceable. The applicant did not appeal against that judgment because on 19 June 2000 she reached an agreement with her ex-husband (under the terms of that agreement she also withdrew another set of proceedings that she had instituted in the Viterbo Court claiming joint title to property).

II. RELEVANT DOMESTIC LAW

31. Under Article 8 § 2 of the Concordat between Italy and the Vatican, as amended by the Agreement of 18 February 1984 revising the Concordat, ratified by Italy under Law no. 121 of 25 March 1985, a judgment of the ecclesiastical courts annulling a marriage, which has become enforceable by a decision of the superior ecclesiastical review body, may be made enforceable in Italy at the request of one of the parties by a judgment of the relevant court of appeal.

32. The court of appeal must check:

(a) that the judgment has been delivered by the correct court;

(b) that in the nullity proceedings the defence rights of the parties have been recognised in a manner compatible with the fundamental principles of Italian law; and

(c) that the other conditions for a declaration of enforceability of foreign judgments have been satisfied.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

33. The applicant complained of a violation of Article 6 of the Convention on the ground that the Italian courts declared the decision of the ecclesiastical courts annulling her marriage enforceable at the end of proceedings in which her defence rights had been breached.

34. The relevant part of Article 6 of the Convention provides:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair... hearing ... by [a]... court ..."

35. The applicant submitted that, in proceedings under canon law, the respondent is not informed before being questioned by the court either of the identity of the petitioner or of the grounds on which they allege that the marriage should be annulled. The respondent is not informed of the possibility of securing the assistance of a defence lawyer (a possibility which some legal writers, moreover, claim does not exist) or of requesting copies of the case file. Consequently, their defence rights are greatly reduced. In the instant case the applicant was not informed in advance of the

reasons for summoning her to appear; nor was she informed of the possibility of instructing a lawyer, either on the summons to appear or when being questioned. She was thus prevented from making a properly considered answer to her ex-husband's requests. She could, for example, have not attended for questioning or have chosen not to reply. Furthermore, without the assistance of a lawyer, she had been intimidated by the fact that the judge was a religious figure.

36. The applicant's defence rights were therefore irremediably compromised after she had appeared before the Ecclesiastical Court and the Italian courts should have refused to ratify the result of such unfair proceedings instead of confining themselves to asserting – without examining the matter thoroughly – that the proceedings before the ecclesiastical courts had been adversarial and fair.

37. The applicant's lawyer had tried to obtain a copy of the case file deposited with the registry of the Ecclesiastical Court when the applicant learnt that the court had heard evidence from three witnesses, but the request was refused. The applicant had therefore been unable to produce those documents in the proceedings before the Italian courts.

38. The applicant also pointed out that the Florence Court of Appeal had dismissed her claim for continued monthly maintenance payments from her ex-husband on the ground that she had failed to establish that she needed the money, although she had produced documents showing that there was such a need. The proceedings in the Italian courts had also, she alleged, been unfair in that regard.

39. The Government submitted that the applicant's defence rights had not in any way been infringed in the present case. They pointed out that the Italian courts had carefully examined all the complaints raised by the applicant and had reached the conclusion, supported by logical argument, that there had not been any infringement of her defence rights. Furthermore, her marriage had been annulled on the basis of objective evidence, namely consanguinity, which had not been disputed by the applicant and had been proved by the documents produced in the proceedings. The fact that the applicant had not been informed of the reason for the summons to appear before the Lazio Regional Ecclesiastical Court and had not been assisted by a lawyer could not be deemed to have harmed her because she had confined herself on that occasion to admitting that she had been aware of the consanguinity.

40. The Court notes at the outset that the applicant's marriage was annulled by a decision of the Vatican courts which was declared enforceable by the Italian courts. The Vatican has not ratified the Convention and, furthermore, the application was lodged against Italy. The Court's task therefore consists not in examining whether the proceedings before the ecclesiastical courts complied with Article 6 of the Convention, but whether the Italian courts, before authorising enforcement of the decision annulling

the marriage, duly satisfied themselves that the relevant proceedings fulfilled the guarantees of Article 6. A review of that kind is required where a decision in respect of which enforcement is requested emanates from the courts of a country which does not apply the Convention. Such a review is especially necessary where the implications of a declaration of enforceability are of capital importance for the parties.

41. The Court must examine the reasons given by the Florence Court of Appeal and the Court of Cassation for dismissing the applicant's complaints about the proceedings before the ecclesiastical courts.

42. The applicant had complained of an infringement of the adversarial principle. She had not been informed in detail of her ex-husband's application to have the marriage annulled and had not had access to the case file. She was therefore unaware, in particular, of the contents of the statements made by the three witnesses who had apparently given evidence in favour of her ex-husband and of the observations of the *defensor vinculis*. Furthermore, she was not assisted by a lawyer.

43. The Florence Court of Appeal held that the circumstances in which the applicant had appeared before the Ecclesiastical Court and the fact that she had subsequently lodged an appeal against that court's judgment were sufficient to conclude that she had had the benefit of an adversarial trial. The Court of Cassation held that, in the main, ecclesiastical court proceedings complied with the adversarial principle.

44. The Court is not satisfied by these reasons. The Italian courts do not appear to have attached importance to the fact that the applicant had not had the possibility of examining the evidence produced by her ex-husband and by the "so-called witnesses". However, the Court reiterates in that connection that the right to adversarial proceedings, which is one of the elements of a fair hearing within the meaning of Article 6 § 1, means that each party to a trial, be it criminal or civil, must in principle have the opportunity to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision (see, *mutatis mutandis*, *Lobo Machado v. Portugal*, and *Vermeulen v. Belgium*, judgments of 20 February 1996, *Reports of Judgments and Decisions* 1996-I, pp. 206-07, § 31, and p. 234, § 33, respectively, and *Mantovanelli v. France*, judgment of 18 March 1997, *Reports* 1997-Π, p. 436, § 33).

45. It is irrelevant that, in the Government's opinion, as the nullity of the marriage derived from an objective and undisputed fact the applicant would not in any event have been able to challenge it. It is for the parties to a dispute alone to decide whether a document produced by the other party or by witnesses calls for their comments. What is particularly at stake here is litigants' confidence in the workings of justice, which is based on, *inter alia,* the knowledge that they have had the opportunity to express their views on every document in the file (see, *mutatis mutandis*, *F.R. v. Switzerland*, no. 37292/97, § 39, 28 June 2001, unreported).

46. The position is no different with regard to the assistance of a lawyer. Since such assistance was possible, according to the Court of Cassation, even in the context of the summary procedure before the Ecclesiastical Court, the applicant should have been put in a position enabling her to secure the assistance of a lawyer if she wished. The Court is not satisfied by the Court of Cassation's argument that the applicant should have been familiar with the case-law on the subject: the ecclesiastical courts could have presumed that the applicant, who was not assisted by a lawyer, was unaware of that case-law. In the Court's opinion, given that the applicant had been summoned to appear before the Ecclesiastical Court without knowing what the case was about, that court had a duty to inform her that she could seek the assistance of a lawyer before she attended for questioning.

47. In these circumstances the Court considers that the Italian courts breached their duty of satisfying themselves, before authorising enforcement of the Roman Rota's judgment, that the applicant had had a fair trial in the proceedings under canon law.

48. There has therefore been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 41 OF THE CONVENTION

49. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

50. The applicant claimed, under the head of pecuniary damage, 40,884,715 Italian lire (ITL) for the maintenance which her ex-husband should have continued paying her from June 1992 until the end of 1999, as determined in the decree of judicial separation delivered by the Rome District Court on 2 October 1990 (see paragraph 13 above). She also alleged that she had sustained substantial non-pecuniary damage as a result of the violation of the Convention totalling, according to her calculations, ITL 160,000,000.

51. The Government pointed out that no evidence of the alleged pecuniary damage had been adduced and that there was no causal link with the alleged violation. They argued, in particular, that although the applicant's ex-husband had admittedly stopped paying her maintenance following the declaration of enforceability of the decision annulling the

marriage, the applicant had subsequently secured a friendly settlement of the issue (see paragraph 30 above): she had therefore already obtained, at least in part, payment of the maintenance due for the years 1992-99. The Government further maintained that a finding of a violation of Article 6 of the Convention would constitute sufficient just satisfaction for the non-pecuniary damage alleged.

52. The Court notes that the cessation of maintenance payments to the applicant was a direct consequence of the declaration that the judgment of the Roman Rota annulling the marriage was enforceable. It observes, however, that, as the Government pointed out, this issue was the subject of a friendly settlement between the applicant and her ex-husband. As the contents of the friendly settlement have not been specified, the Court does not have the evidence necessary to quantify any pecuniary damage which might have been sustained under this head by the applicant. Her request for pecuniary damage must accordingly be rejected.

53. The Court considers that the applicant sustained some non-pecuniary damage, which cannot be compensated simply by a finding of a violation. Ruling on an equitable basis, in accordance with Article 41 of the Convention, the Court decides to award her ITL 10,000,000.

B. Costs and expenses

54. The applicant also claimed reimbursement of lawyer's fees incurred in the various domestic proceedings (ITL 21,232,860, of which ITL 2,024,790 for the Court of Appeal proceedings and ITL 6,050,000 for the Court of Cassation proceedings) and before the Convention institutions (ITL 12,203,940), in respect of which she submitted supporting documentary evidence.

55. The Government left the matter to the Court's discretion.

56. The Court reiterates that, according to its established case-law, an award of costs and expenses incurred by an applicant cannot be made unless they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see, *inter alia*, *Lucà v. Italy*, no. 33354/96, § 50, ECHR 2001-II, and *Zimmermann and Steiner v. Switzerland*, judgment of 13 July 1983, Series A no. 66, p. 14, § 36).

57. With regard to the costs incurred in the domestic proceedings, the Court notes that only the costs of the Court of Cassation proceedings stem directly from the violation found and the attempt to remedy it. Accordingly, it decides to award only ITL 6,050,000 under this head.

58. With regards to the costs incurred before the Strasbourg institutions, the Court awards the applicant the entire sum claimed of ITL 12,203,940.

C. Default interest

59. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 3.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) ITL 10,000,000 (ten million Italian lire) in respect of non-pecuniary damage;
      (ii) ITL 18,253,940 (eighteen million two hundred and fifty-three thousand nine hundred and forty Italian lire) in respect of costs and expenses; and
   (b) that simple interest at an annual rate of 3.5% shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 20 July 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President