



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

COURT (CHAMBER)

**CASE OF ZANGHÌ v. ITALY**

*(Application no. 11491/85)*

JUDGMENT

STRASBOURG

19 February 1991

**In the Zanghì case\*,**

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 J. CREMONA,  
Mr Thór VILHJÁLMSSON,  
Mrs D. BINDSCHEDLER-ROBERT,  
Mr F. GÖLCÜKLÜ,  
Mr C. RUSSO,  
Mr N. VALTICOS,  
Mr S.K. MARTENS,  
Mr J.M. MORENILLA,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 4 October 1990 and 24 January 1991,

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

**PROCEDURE**

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 16 February 1990, 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. 11491/85) against Italy lodged with the Commission under Article 25 (art. 25) by a national of that State, Mr Claudio Zanghì, on 16 April 1985.

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 of the Convention and Article 1 of Protocol No. 1 (art. 6-1, P1-1).

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\* The case is numbered 3/1990/194/254. 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 Protocol No. 8, which came into force on 1 January 1990.

\*\*\* The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings. He was granted leave to present his own case (Rule 30 para. 1, second sentence).

3. On 21 February 1990 the President of the Court decided, under Rule 21 para. 6 and in the interests of the proper administration of justice, that a single Chamber should be constituted to consider the instant case and the Brigandi and Santilli cases\*.

4. The Chamber to be constituted 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 26 March 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr J. Cremona, Mr Thór Vilhjálmsson, Mrs D. Bindschedler-Robert, Mr F. Gölcüklü, Mr R. Bernhardt, Mr S.K. Martens and Mr J.M. Morenilla (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr N. Valticos, substitute judge, replaced Mr Bernhardt, who was unable to take part in the consideration of the case (Rules 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 Registrar, consulted the Agent of the Italian Government ("the Government"), the Delegate of the Commission and the applicant on the need for a written procedure (Rule 37 para. 1). In accordance with the order made in consequence, the Registrar received the applicant's memorial on 16 July 1990 and the Government's memorial on 31 July. In a letter received on 31 August, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

6. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 29 August 1990 that the oral proceedings should open on 3 October (Rule 38).

7. On 31 August and 3 October the Commission produced the file on the proceedings before it, as the Registrar had requested on the President's instructions.

8. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr G. RAIMONDI, magistrato,

on secondment to the Diplomatic Legal Service, Ministry of

Foreign Affairs,

*Co-Agent,*

Mr G. MANZO, magistrato,

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\* Note by the Registrar. Cases nos. 2/1990/193/253 and 5/1990/196/256.

<p>on secondment to the Ministry of Justice,  - for the Commission  Mr F. MARTINEZ,  - the applicant,  Mr C. ZANGHÌ, in person, assisted by Mr V. MARONE, avvocato.  The Court heard addresses by the above-mentioned representatives.</p>	<p><i>Counsel;</i>  <i>Delegate;</i></p>
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## AS TO THE FACTS

9. Mr Claudio Zanghì, a university professor, lives in Rome.

In 1982, as co-owner of a secondary residence situated inland from Catania (Sicily), he complained to a neighbour, Mrs D., that he had suffered damage from works she had had carried out on a property adjoining his own. In particular, a 3-foot dividing wall collapsed. Mrs D. rebuilt the wall but to a height of six feet, thereby depriving Mr Zanghì of a view of the sea.

10. On 3 April 1982 Mr Zanghì brought proceedings in the Catania District Court. He sought a declaration that there was a right of view for the benefit of his property, an injunction requiring his neighbour to restore the situation to what it had been formerly and damages.

11. Preparation of the case for trial began on 25 May 1982 and continued until 22 January 1985; the parties then made their final submissions to the judge in charge of the preparation of the case (*giudice istruttore*), who sent the case for trial, the hearing to take place in the District Court on 29 May 1986.

12. When the day came, one of the judges had been transferred and the court therefore adjourned the case to 10 March 1988, when judgment was reserved.

13. The judgment was delivered on 17 March 1988 and filed in the registry on 9 May; in it the court made the declarations and orders sought by the applicant, who notified it to the defendant on 19 July.

14. On 27 September 1988 Mrs D. appealed. Hearings took place on 20 January 1989, 18 May 1989 and 28 May 1990 before the appeal-court judge responsible for preparing the case (*consigliere istruttore*), who then sent the parties to the Court of Appeal to make their submissions. According to the information supplied to the European Court, the Court of Appeal has not yet given judgment.

## PROCEEDINGS BEFORE THE COMMISSION

15. In his application of 16 April 1985 to the Commission (no. 11491/85) Mr Zanghì complained of the length of the civil proceedings he had

instituted and of the failure to respect his entitlement to the peaceful enjoyment of his possessions; he relied on Article 6 of the Convention and Article 1 of Protocol No. 1 (art. 6-1, P1-1).

16. The Commission declared the application admissible on 5 December 1988. In its report of 11 December 1989 (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) of the Convention but not of Article 1 of Protocol No. 1 (P1-1). The full text of the Commission's opinion and of the separate opinion contained in the report is reproduced as an annex to this judgment\*.

## FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

17. At the hearing on 3 October 1990 the Government maintained the final submission in their memorial, in which they requested the Court to hold that there had been no violation of the Convention or of Protocol No. 1 in the instant case.

## AS TO THE LAW

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

18. Mr Zanghì submitted that his civil action was not tried within a "reasonable time" as required by Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The Government rejected this submission but the Commission accepted it.

19. The proceedings, which began on 3 April 1982 when Mrs D. was summoned before the Catania District Court, remain pending.

20. The participants in the proceedings presented argument as to the way in which the various criteria employed by the Court in this context - such as the degree of complexity of the case, the conduct of the applicant and that of the competent authorities - should apply in the present case.

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\* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 194-C of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

21. Under Article 6 para. 1 (art. 6-1) of the Convention everyone has the right to a final decision, within a reasonable time, on disputes (contestations) over his civil rights and obligations. The Contracting States accordingly have the obligation to organise their legal systems so as to allow the courts to comply with this requirement (see, as the most recent authority, the *Unión Alimentaria Sanders SA* judgment of 7 July 1989, Series A no. 157, pp. 14-15, para. 38).

The Court points out that, under its case-law on the subject, the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case. In this instance the circumstances call for an overall assessment (see, *mutatis mutandis*, the *Obermeier* judgment of 28 June 1990, Series A no. 179, p. 23, para. 72).

As the case was not a complex one, the Court cannot regard as "reasonable" a lapse of time which has already amounted to nearly nine years.

There has accordingly been a breach of Article 6 para. 1 (art. 6-1).

## II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

22. The applicant claimed that the length of the proceedings in question deprived him of the enjoyment of his property. He relied on Article 1 of Protocol No. 1 (P1-1), which provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Neither the Government nor the Commission shared this view.

23. In view of the circumstances of the case and the conclusion reached in paragraph 21 above, the Court considers it unnecessary to determine also the complaint based on Article 1 of Protocol No. 1 (P1-1).

## III. APPLICATION OF ARTICLE 50 (art. 50)

24. 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."

Mr Zanghì said he was making no claim for pecuniary compensation for the breach of Article 6 para. 1 (art. 6-1) and that out of devotion to the cause of human rights he was not seeking reimbursement of the fees and expenses paid during the proceedings before the Convention institutions. On the other hand, he sought compensation of 7,950,000 Italian lire in respect of the pecuniary damage resulting from the alleged breach of Article 1 of Protocol No. 1 (P1-1).

The Commission and the Government expressed no view on the matter.

25. It is still possible that the national courts, before which the applicant's action remains pending, may make reparation for the financial consequences of failing to try the case within a reasonable time (see, *mutatis mutandis*, the Brigandì judgment of today's date, para. 34). That being so, and in the circumstances of the case, it would appear appropriate, as matters stand, to dismiss the claim.

26. The applicant also requested the Court to indicate to the respondent State measures that should be introduced to remedy the dilatoriness he alleged to be characteristic of the administration of justice in Italy. The Court recalls that it is for the State to choose the means to be used in its domestic legal system to redress the situation that has given rise to the violation of the Convention (see, *mutatis mutandis*, the Belilos judgment of 29 April 1988, Series A no. 132, p. 33, para. 78).

#### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention;
2. Holds that it is unnecessary to rule on the complaint based on Article 1 of Protocol No. 1 (P1-1);
3. Dismisses, as matters stand, the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 February 1991.

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar