

In the case of *Cooperativa Parco Cuma 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. Ryssdal, President,  
Mr F. Matscher,  
Mr B. Walsh,  
Mr C. Russo,  
Mr A. Spielmann,  
Mr N. Valticos,  
Mr A.N. Loizou,  
Mr J.M. Morenilla,  
Mr F. Bigi,

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

Having deliberated in private on 29 October 1991 and 24 January 1992,

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

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#### Notes by the Registrar

\* The case is numbered 50/1991/302/373. 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 on 19 April 1991 by the European Commission of Human Rights ("the Commission"), 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. 12145/86) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian co-operative association, *Cooperativa Parco Cuma*, on 25 February 1986.

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 association stated that it wished to take part in the proceedings and designated the lawyer who would represent it (Rule 30).

3. On 23 April 1991 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 *Diana, Ridi*,



(c) for the applicant

Mr G. de Sangro, avvocato,

Counsel.

The Court heard addresses by Mr Raimondi and Mrs Passannanti for the Government, by Mr Frowein for the Commission and by Mr de Sangro for the applicant, as well as their answers to its question.

8. On 10 October the Government had filed their observations on the applicant's claims for just satisfaction (Article 50 of the Convention) (art. 50); on 5 November the Commission lodged its observations on those claims.

#### AS TO THE FACTS

9. The applicant is a building association whose registered office is in Naples. The facts established by the Commission pursuant to Article 31 para. 1 (art. 31-1) of the Convention are as follows (paragraphs 17-25 of its report):

"17. By summons served on 3 November 1980, the applicant association took proceedings before the Naples District Court against nine co-owners of the building for whose construction it had been responsible, claiming payment of sums which it was owed as part of the joint expenditure.

18. Before the investigation opened, the applicant discontinued proceedings against five members who had paid it the outstanding sums. One member, Mrs I., from whom the applicant demanded payment of 818,726 Italian lire, contested the validity of its claims. Three other members did not appear in court.

19. The investigation opened at the hearing of 16 December 1980, followed by hearings on 17 March, 9 June (when counsel for the defendants requested an adjournment as the applicant's counsel was absent) and 5 November 1981.

20. At the hearings of 23 February and 11 May 1982, the applicant asked for Mrs I. to be examined but counsel for the defendants objected.

21. Two hearings were held on 24 June and 23 November 1982, when the investigating judge decided to examine Mrs I. and Mr Q., the general manager of the applicant association.

22. At the hearing of 29 March 1983, neither Mrs I. nor Mr Q. was present. Mr Q. appeared at the hearing of 5 July 1983, adjourned at the request of the defendants. Mrs I. was heard on 13 December 1983. At no stage was Mr Q. examined.

23. Two further hearings took place on 15 May and 13 November 1984. The parties then made their final submissions at the hearing of 24 October 1985 and the investigating judge referred the case to the competent chamber of the court. The hearing before it was fixed for 24 June 1987. The applicant asked for an earlier date, but on 23 January 1986 the presiding judge of the District Court refused the request owing to the heavy case-load.

24. After the hearing of 24 June 1987 the court chamber, by order of 8 July 1987 registered on 25 September 1987, referred the case back to the investigating judge because

the summons of 3 November 1980 had not been duly served on two of the three members who had been declared in default.

25. The hearing before the investigating judge was fixed for 2 February 1988. Three hearings took place on 25 October 1988 (when the applicant discontinued proceedings against the two members who had not been duly summonsed), 15 December 1988 and 30 March 1989. On that date, the parties made their final submissions and the investigating judge fixed the hearing before the competent chamber of the court for 3 April 1991."

10. According to the information supplied to the European Court by the applicant, the next hearing before the District Court is scheduled for 25 March 1992.

#### PROCEEDINGS BEFORE THE COMMISSION

11. Cooperativa Parco Cuma lodged its application with the Commission on 25 February 1986. It complained of the length of the civil proceedings brought by it and relied on Article 6 para. 1 (art. 6-1) of the Convention.

12. On 11 May 1990 the Commission declared the application (no. 12145/86) admissible. In its report of 5 March 1991 (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\*.

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\* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 231-E 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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#### FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

13. At the hearing the Government confirmed the submission put forward in their memorial, in which they requested the Court to hold "that there [had] been no violation of the Convention in the present case".

#### AS TO THE LAW

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

14. The applicant association claimed that its civil action had not been tried within a "reasonable time" as required under 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 disputed this view, whereas the Commission accepted it.

15. The period to be taken into consideration began on 3 November 1980, when the proceedings were instituted against the defendants in the Naples District Court. It has not yet ended as that court has still to give judgment.

16. The reasonableness of the length of proceedings is to be assessed 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.

17. The Government invoked the applicant association's conduct and the excessive workload of the District Court. The applicant asserted, on the contrary, that its conduct was not open to criticism and that the investigating judge bore the entire responsibility for the delays in the first stage of the proceedings.

18. The Court notes that the investigation took more than eight years and three months (16 December 1980 - 30 March 1989). A further two years then elapsed before the date fixed for the trial hearing (3 April 1991), which is finally to be held on 25 March 1992, at the earliest.

As regards the first period, the Court points out that the applicant association caused one adjournment (9 June 1981). However, the Commission rightly drew attention to a period of inactivity from 24 October 1985 to 24 June 1987. Moreover the judge waited until the hearing on 23 November 1982 before ordering that certain witnesses be called - Mrs I. and Mr Q. -, witnesses whom the applicant had proposed calling on 23 February and 11 May 1982. Mrs I. was not in fact examined until 13 December 1983 and the examination of Mr Q. never took place. Yet these were investigative measures which fell to be carried out within the context of judicial proceedings supervised by the judge, who remained responsible for the preparation of the case and for the speedy conduct of the trial (see the Capuano v. Italy judgment of 25 June 1987, Series A no. 119, p. 13, para. 30). Finally the Naples District Court waited until 8 July 1987 before finding that the summons of 3 November 1980 had not been served on certain defendants and it did not file its order until 25 September 1987.

The second period, which began on 30 March 1989, coming as it did after the first, made the situation worse. The Government pleaded the backlog of cases, but Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of its requirements (see, *inter alia*, the Vocaturio v. Italy judgment of 24 May 1991, Series A no. 206-C, p. 32, para. 17).

19. Taking the proceedings as a whole, the Court cannot regard as "reasonable" in this instance their total duration, which already amounts to more than eleven years, in a case which is still pending at first instance.

There has therefore been a violation of Article 6 para. 1 (art. 6-1).

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

20. According to 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

21. The applicant association claimed in the first place, in respect of pecuniary damage, 3,085,241 Italian lire plus interest and adjusted to the appropriate inflation rate and, in respect of

non-pecuniary damage, 100 lire for itself and 10,000,000 lire for the municipality of Pozzuoli or any other public body in order to enable certain work to be carried out.

The Commission took the view that, in addition to reparation for non-pecuniary damage, the association was entitled to compensation for any pecuniary damage sustained by it, if it succeeded in establishing its existence and that of a causal connection with the violation found.

The Government could not perceive any such causal connection. As to non-pecuniary damage, a finding of a violation would constitute sufficient just satisfaction for the purposes of Article 50 (art. 50).

22. The Court shares this opinion.

B. Costs and expenses

23. The applicant association also sought the reimbursement of the costs and expenses which it had incurred in the national courts and then before the Convention organs in amounts of 13,547,620 and 3,090,334 lire respectively.

24. The first sum cannot be taken into consideration because it does not appear from the evidence that the applicant incurred such costs in order to prevent the breach of the "reasonable time" requirement of Article 6 para. 1 (art. 6-1). On the other hand, having regard to the evidence at its disposal and to its case-law in this field, it awards the association the second sum in its entirety.

C. Interest

25. The Commission invited the Court to fix for the Government - who did not give their opinion - a compulsory time-limit for executing the present judgment and to make provision for the payment of interest in the event of their failure to comply therewith.

26. The first of these proposals is in conformity with a practice followed by the Court since October 1991.

As to the second, the Court does not consider it appropriate to require any payment of interest in this instance, particularly as no such request was made by the applicant.

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 present judgment constitutes in itself, in respect of any non-pecuniary damage, sufficient just satisfaction for the purposes of Article 50 (art. 50);
3. Holds that the respondent State is to pay to the applicant association, within three months, 3,090,334 (three million ninety thousand three hundred and thirty four) Italian lire for costs and expenses;
4. 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 27 February 1992.

Signed: Rolv RYSSDAL  
President

Signed: Marc-André EISSEN  
Registrar