



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

COURT (CHAMBER)

CASE OF ZANGHÌ v. ITALY (ARTICLE 50)

(Application no. 11491/85)

JUDGMENT

STRASBOURG

10 February 1993

In the case of Zanghì 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 J. CREMONA, *President*,
Mr Thór VILHJÁLMSSON,
Mrs D. BINDSCHEDLER-ROBERT,
Mr F. GÖLCÜKLÜ,
Sir Vincent EVANS,
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 23 September 1992 and 1 February 1993,

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

PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 16 February 1990. It originated in an application (no. 11491/85) against the Italian Republic lodged with the Commission by an Italian national, Mr Claudio Zanghì, on 16 April 1985.

2. For the facts of the case, reference should be made to paragraphs 9-14 of the judgment delivered on 19 February 1991 (Series A no. 194-C, p. 45). In that judgment the Court found a violation of Article 6 para. 1 (art. 6-1) of the Convention because civil proceedings brought on 3 April 1982, though not complex, remained pending (*ibid.*, pp. 46-47, paras. 18-21 of the judgment, and point 1 of the operative provisions). The Court did not deem it necessary to consider also the complaint based on Article 1 of Protocol

* 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 Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

No. 1 (P1-1) (*ibid.*, p. 47, paras. 22-23 of the judgment, and point 2 of the operative provisions).

3. Mr Zanghì did not make any pecuniary claim in respect of the violation of Article 6 para. 1 (art. 6-1), nor did he seek reimbursement of the costs and fees incurred in the proceedings before the Commission and the Court. He did, on the other hand, seek compensation in the amount of 7,950,000 Italian lire for pecuniary damage sustained as a result of the alleged breach of Article 1 of Protocol No. 1 (P1-1).

The Court dismissed this claim as matters stood, as it was still possible that the national courts would make reparation for the financial consequences of failing to try the case within a reasonable time (*ibid.*, pp. 47-48, paras. 24-26 of the judgment and point 3 of the operative provisions).

4. In a judgment of 31 May 1990, which was filed in its registry on 25 June 1990 and became final on 26 September 1991, the Catania Court of Appeal found against Mrs D. and awarded the respondent, Mr Zanghì, compensation in the amount of 298,000 lire, representing the value of a parcel of land that had been unlawfully occupied by Mrs D.

The applicant informed the European Court's registry of this decision on 24 May 1991 and supplied the text on 27 January 1992.

5. On 18 September 1991, as authorised by the President, Mr Zanghì filed his claim for just satisfaction.

On 11 and 23 March 1992 observations were received from the Government and the Commission respectively; the applicant replied to them on 21 April.

6. On 23 September 1992 the Court re-entered the case in its list and decided not to hold a hearing.

7. As Mr R. Ryssdal was unable to attend the deliberations on 1 February 1993, his place as President of the Chamber was taken by Mr J. Cremona (Rule 21 para. 5, second sub-paragraph); Sir Vincent Evans, substitute judge, replaced Mr Ryssdal as a member of the Chamber (Rules 22 para. 1 and 24 para. 1).

AS TO THE LAW

8. 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."

9. Mr Zanghì maintained that the Court's dismissal, "as matters stood", of his earlier claim was explained by the fact that there had not been any

final national decision and by the possibility that the relevant authorities might make reparation for the financial damage caused by the failure to try the case within a reasonable time. As the situation had changed in the meantime (see paragraph 4 above), he asked the Court to award him 13,057,862 lire - a sum to be adjusted for inflation and to which statutory interest up to the date of payment should be added - in compensation for the "pecuniary damage sustained during the period representing the excessive length of the proceedings" (letter of 18 September 1991, para. 11).

10. The Government submitted that the fresh claim should be dismissed, since it was identical with the original one. In the alternative, they pleaded estoppel, as the applicant had stated in his memorial of 16 July 1990 that he was not seeking compensation for the breach of Article 6 para. 1 (art. 6-1) of the Convention.

11. The Commission observed at the outset that it was not part of its functions to interpret the judgment of 19 February 1991. It expressed surprise that Mr Zanghì had neglected to disclose to the Court during the hearing on 3 October 1990 that the Catania Court of Appeal had given a decision four months earlier; this was a matter not just of courtesy but of the parties' duty to inform the Court of any fact relevant to the consideration of a case. Lastly, it opined that the fact that a judgment - an immediately enforceable one, moreover - had become final could not justify a further decision under Article 50 (art. 50).

12. The Court finds that, as it held it unnecessary to rule on the complaint based on Article 1 of Protocol No. 1 (P1-1), the financial consequences of an infringement of the applicant's right to the peaceful enjoyment of his possessions cannot be taken into consideration. As to the consequences of the breach of Article 6 para. 1 (art. 6-1) of the Convention which it found on 19 February 1991, it noted at the time, even though no claim for just satisfaction had been made under that head, that it was still possible that the national courts might make reparation for them. The Catania Court of Appeal's judgment of 31 May 1990, the text of which was only communicated to the Court on 27 January 1992, is not of such a nature as to call for a reconsideration of the decision delivered on 19 February 1991.

FOR THESE REASONS, THE COURT

Dismisses by eight votes to one the applicant's claim for just satisfaction.

Done in English and in French, and notified in writing on 10 February 1993 pursuant to Rule 55 para. 2, second sub-paragraph, of the Rules of Court.

John CREMONA
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the dissenting opinion of Mrs Bindschedler-Robert is annexed to this judgment.

J.C.
M.-A.E.

DISSENTING OPINION OF JUDGE BINDSCHIEDLER-
ROBERT*(Translation)*

I concur with the Court

(a) when it acknowledges (by implication) that the dismissal of the claim for just satisfaction "as matters stood" in its judgment of 19 February 1991 was only provisional;

(b) when it considers (likewise by implication) that the issue it has to determine is that of the damage caused to the applicant by the breach of Article 6 (art. 6), thus recognising that there is no cause to hold that he is estopped because he relied at the time, in support of his claim, on Article 1 of Protocol No. 1 (P1-1) and not on Article 6 (art. 6) of the Convention, and therefore taking into account the fact that the Court itself said, in its judgment of 19 February 1991, that it considered it unnecessary to determine also the complaint based on the latter Article in view of the circumstances of the case and the finding of a breach of the former Article for failure to try the case within a "reasonable time"; and

(c) when it refrains from drawing conclusions unfavourable to the applicant from the fact that he did not make known to it, before the judgment of 19 February 1991 was delivered, the text of the Catania Court of Appeal's judgment, and thus has regard to the fact that this judgment did not become final until 26 September 1991, in other words after it had delivered its own judgment.

To my great regret, I find I must part company with the majority when they state that the Catania Court of Appeal judgment "is not of such a nature as to call for a reconsideration of the decision delivered on 19 February 1991" and accordingly dismiss the applicant's claim for just satisfaction, this time finally.

It is true that the Catania Court of Appeal, upholding the judgment of the Catania District Court, ordered the defendant, Mrs D., to pay the applicant compensation in the amount of 298,000 lire; but an examination of the judgment shows that this compensation was for the physical damage caused by the construction of the dividing wall - which damage does not fall to be taken into account for the purposes of Article 6 (art. 6). The Court of Appeal does indeed confirm the existence of a right of view for the benefit of the applicant, but does not determine whether damage flowed from the temporary loss of that right or what any such damage consisted in or its amount. In any case, even if the compensation had been awarded in respect of such damage, the question would arise of the extent to which it satisfied the requirements of Article 50 (art. 50). In my opinion, it is so minimal that the answer to that question must be in the negative.

In conclusion, I am mainly of the view that the Court should have considered the consequences of the Catania Court of Appeal's judgment in regard to Article 50 (art. 50). I also consider that, since the compensation upheld in that judgment did not relate to the damage sustained as a result of the prolonged loss of the right of view, and as the compensation awarded was anyway too minimal to satisfy the requirements of Article 50 (art. 50), the Court should have ordered the Italian State to pay a certain sum as just satisfaction.