



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

COURT (CHAMBER)

CASE OF GOISIS v. ITALY

(Application no. 15310/89)

JUDGMENT

STRASBOURG

22 September 1993

In the case of Goisis 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 R. BERNHARDT,

Mr C. RUSSO,

Mr I. FOIGHEL,

Mr F. BIGI,

Mr A.B. BAKA,

Mr M.A. LOPES ROCHA,

Mr L. WILDHABER,

Mr J. MAKARCZYK,

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

Having deliberated in private on 23 June and 25 August 1993,

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 11 December 1992. It originated in an application (no. 15310/89) against the Italian Republic lodged with the Commission under Article 25 (art. 25) of the Convention by an Italian national, Mr Mario Goisis, on 16 May 1989.

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 Articles 6 para. 1 and 13 (art. 6-1, art. 13) of the Convention.

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 case is numbered 46/1992/391/469. 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.

the proceedings and designated the lawyer who would represent him (Rule 30).

3. On 16 December 1992 the President of the Court decided, in the interests of the proper administration of justice, that this case - and the cases of *Istituto di Vigilanza* and *Figus Milone v. Italy** - should be examined by the Chamber constituted to consider the case of *Scopelliti v. Italy*** (Rule 21 para. 6). This Chamber 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)), the other seven members, drawn by lot in the presence of the Registrar, being Mr N. Valticos, Mr I. Foighel, Mr F. Bigi, Mr A.B. Baka, Mr M.A. Lopes Rocha, Mr L. Wildhaber and Mr J. Makarczyk (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr R. Bernhardt, substitute judge, replaced Mr Valticos, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Italian Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received memorials and observations from the applicant, the Government and the Delegate of the Commission on various dates between 27 April and 19 July 1993.

5. On 28 April 1993 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. On 23 June 1993 the Chamber decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 26 and 38).

AS TO THE FACTS

7. Mr Mario Goisis lives at Zanica (in the province of Bergamo).

8. On 4 January 1989 he sued Mr G.N., Mr E.Q.Y. and Mrs M.T. in the Bergamo magistrate's court (pretore). He sought to have them ordered to move the low wall which enclosed their properties so that the width of the adjoining road should be not less than five metres along the whole of its length.

9. The case was listed on 16 January 1989. At the first hearing, on 22 February 1989, the applicant and Mr E.Q.Y. asked for an adjournment so

* Cases nos. 42/1992/387/465 and 43/1992/388/466.

** Case no. 41/1992/386/464.

that the other parties' pleadings could be studied. The magistrate adjourned the proceedings to 7 February 1990.

10. On 5 April 1989 Mr Goisis' lawyer applied for an earlier date. The magistrate refused the application on 8 April, on the grounds that there was no urgency and that the time allowed was in accordance with the usual practice.

On 11 April, however, he agreed to bring the hearing forward to 22 November 1989, on account of a change in the timetable. When the day came, Mr E.Q.Y. raised an objection to jurisdiction - joining Mr G.N. and Mrs M.T., who had already made such an objection in their pleadings of 14 February - and sought a second adjournment.

11. On 15 January 1990, on an application by Mr E.Q.Y., the magistrate ordered the joinder of a limited company, Edilpiatti S.r.l. He adjourned the proceedings to 9 May and then, of his own motion on this occasion, to 17 July 1990. Other hearings were held on 12 December 1990 and 9 April and 20 November 1991.

12. On the last-mentioned date the magistrate reserved judgment, but on 1 December he relisted the case and commissioned an expert opinion.

13. The proceedings were reopened on 12 March 1992, when a deadline of 31 July 1992 was set for the filing of the expert's report, and the proceedings continued on 28 October and 9 December 1992 and 20 January 1993.

14. In a judgment of 7 April 1993, which was filed at the registry on 14 April, the magistrate declined jurisdiction in favour of the Bergamo District Court. He also set a strict deadline of two months for resuming the proceedings, and these were resumed on 26 May 1993.

PROCEEDINGS BEFORE THE COMMISSION

15. Mr Goisis applied to the Commission on 16 May 1989. He complained of the length of the civil proceedings he had brought in the Bergamo magistrate's court and of the lack in Italian law of any effective remedy against excessive length of proceedings. He relied on Articles 6 para. 1 and 13 (art. 6-1, art. 13) of the Convention.

16. The Commission declared the application (no. 15310/89) admissible on 11 September 1991. In its report of 1 July 1992 (made under Article 31) (art. 31), it expressed the opinion by five votes to three that there had been a violation of Article 6 para. 1 (art. 6-1) but not of Article 13 (art. 13). The

full text of the Commission's opinion and of the partly dissenting opinion contained in the report is reproduced as an annex to this judgment*.

AS TO THE LAW

THE GOVERNMENT'S PRELIMINARY OBJECTION

17. In their memorial of 24 May 1993 the Government maintained at the outset that the Commission had exceeded the time laid down by Article 32 para. 1 (art. 32-1) of the Convention, which provides:

"If the question is not referred to the Court in accordance with Article 48 (art. 48) of [the] Convention within a period of three months from the date of the transmission of the report to the Committee of Ministers, the Committee of Ministers shall decide ... whether there has been a violation of the Convention."

The Commission had referred the case to the Court only on 11 December 1992, whereas its report had been sent to the Committee of Ministers on 10 September 1992. The Government therefore invited the Court to consider the question of its jurisdiction to deal with the case.

The applicant expressed no view.

18. The Delegate of the Commission considered that the word "referred" could be understood as meaning the date on which the decision to refer the case to the Court was adopted - in this instance, 5 December 1992 - as well as the date on which the document bringing the case before the Court was lodged. He wondered, however, whether the Court needed to decide the question in the present case, since the Government had not formally challenged the Court's jurisdiction and had made detailed observations on the merits of the case.

19. The Court nevertheless considers itself bound to make a ruling as the Government have clearly put the issue before it and have expressly asked the Court to determine it.

The Court points out that by the terms of the French text of Article 47 (art. 47), it may only "être saisie d'une affaire" (be seised of a case) within the period of three months provided for in Article 32 (art. 32). The use of the verb "saisir" appears to be incompatible with the interpretation of the word "referred" that the Delegate of the Commission seemed to be advocating. In order to seise a court, it is not sufficient to decide to seise it.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 265-E of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

The decision must be implemented. The same applies, moreover, to the word "refer". Besides, any other reading of Article 32 para. 1 and Article 47 (art. 32-1, art. 47) would be likely to produce - as regards one of the conditions to be satisfied by the Contracting States or even by individuals, non-governmental organisations or groups of individuals when applying to the Commission itself - results contrary to the letter and spirit of Article 26 (art. 26) in fine and to the case-law established in the matter from the very beginning.

That being so, the finding is inescapable that the Commission exceeded - albeit by only one day - the time allowed it. Furthermore, no special circumstance of a nature to suspend the running of time or justify its starting to run afresh is apparent from the file.

The request bringing the case before the Court is consequently inadmissible as it was made out of time.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that it cannot deal with the merits of the case.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 September 1993.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar