

In the case of Scuderi 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. Macdonald,  
Mr C. Russo,  
Mr A. Spielmann,  
Mr S.K. Martens,  
Mr I. Foighel,  
Sir John Freeland,  
Mr A.B. Baka,  
Mr M.A. Lopes Rocha,

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

Having deliberated in private on 23 April and 23 June 1993,

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

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#### Notes by the Registrar

\* The case is numbered 19/1992/364/438. 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 by the European Commission of Human Rights ("the Commission") on 10 July 1992, 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. 12986/87) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Giuseppe Scuderi, on 14 February 1987.

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 stated that he did not wish to take part in the proceedings.

3. On 26 September 1992 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 cases of M.R. and Massa v. Italy\*.

\* Cases nos. 20/1992/365/439 and 23/1992/368/442.

4. The Chamber to be constituted for this purpose 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 September likewise, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Macdonald, Mr A. Spielmann, Mr S.K. Martens, Mr I. Foighel, Sir John Freeland, Mr A.B. Baka and Mr M.A. Lopes Rocha (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

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") and the Delegate of the Commission on the organisation of the procedure (Rules 37 para. 1 and 38). In a letter of 14 December 1992 the Government stated that they would not be filing a memorial.

6. On 25 November 1992 the Chamber had 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).

7. On 19 January 1993 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

8. On 18 March 1993 the Government filed their observations on the claim for just satisfaction which the applicant had sent to the Registrar on 9 November 1992 (Article 50 of the Convention; Rules 50 and 1 (k) taken together) (art. 50). The Delegate of the Commission replied to them on 10 May 1993.

#### AS TO THE FACTS

9. Mr Giuseppe Scuderi lives at Santa Maria delle Mole (in the province of Rome). Pursuant to Article 31 para. 1 (art. 31-1) of the Convention, the Commission established the following facts (see paragraphs 6-9 of its report):

"6. By a decree of the Minister of Finance dated 14 April 1980, at the end of a series of proceedings which had lasted twenty-five years in total, the applicant, an official at the Ministry of Finance until his retirement in 1973, was retrospectively acknowledged as being entitled to an upgrading and, consequently, to receive the corresponding difference in remuneration.

7. On 23 November 1982 the applicant brought an action against the Ministry of Finance, the Treasury and the Ente Nazionale di Previdenza e Assistenza per i Dipendenti Statali (ENPAS) in the Lazio Regional Administrative Court. He sought a recalculation of the salary due to him ...

8. On 24 May 1984 counsel for the State filed notice that he would be appearing for the three defendant authorities. On 2 October 1984 the Administrative Court ordered the three defendant authorities to investigate the applicant's complaint. On 17 October 1985 counsel for the State submitted his defence ...

9. On 29 October 1985 the Lazio Regional Administrative Court allowed Mr Scuderi's application and ordered the Ministry of Finance and the ENPAS to pay an amount calculated in the

manner indicated in the judgment. The text of the judgment was filed in the registry on 3 March 1987."

10. That judgment was notified to the parties on 12 and 13 March 1987 and became final on 13 May 1987, the time-limit for any appeal by counsel for the State.

#### PROCEEDINGS BEFORE THE COMMISSION

11. Mr Scuderi applied to the Commission on 14 February 1987. Relying on Article 6 para. 1 (art. 6-1) of the Convention, he complained of the length of the proceedings he had instituted to assert his right to an upgrading and of the action he had brought in the Lazio Regional Administrative Court in 1982.

12. On 14 October 1991 the Commission declared the application (no. 12986/87) admissible as regards the latter complaint and inadmissible as to the rest. In its report of 8 April 1992 (made under Article 31) (art. 31) the Commission 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 265-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

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#### AS TO THE LAW

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

13. The applicant complained of the length of the proceedings in the Lazio Regional Administrative Court; he considered it incompatible with 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 argument, but the Commission accepted it.

14. The period to be considered began on 23 November 1982, the date of the application to the Administrative Court, and ended on 13 May 1987, the time-limit for any appeal by counsel for the State.

15. The reasonableness of the length of proceedings is to be determined 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.

16. Like the Commission, the Court notes that the case was not complex and that Mr Scuderi's conduct did not contribute to slowing down the proceedings. While these followed their course at a normal speed until 29 October 1985, it thereafter took more than sixteen months for the reasons given in the judgment delivered by the Administrative Court on that date to be made known through being filed in the registry.

The Government pleaded the excessive workload of the Administrative Court and, in particular, of the judge responsible for writing the decision of 29 October 1985 (see paragraph 9, no. 9, above), but Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organise their judicial systems in such a way that

their courts can meet each of its requirements (see, among many other authorities, the De Micheli v. Italy judgment of 26 February 1993, Series A no. 257-D, p. 48, para. 20).

17. That being so, the Court cannot consider that a period of more than four years and five months for a single level of jurisdiction was "reasonable" in this case.

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

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

18. Mr Scuderi sought - without quantifying it - compensation under Article 50 (art. 50) , which provides:

"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."

19. Like the Government and the Commission, the Court notes that the applicant has not proved that he suffered any pecuniary damage flowing from the breach of Article 6 (art. 6). Moreover, Italian law provides for full compensation for monetary depreciation and the payment of interest at an annual rate of 10% to successful litigants.

On the other hand, the applicant did suffer some non-pecuniary damage, which the finding of a breach does not sufficiently compensate. Under this head he should be awarded 3,000,000 Italian lire.

20. The applicant did not seek reimbursement of costs and expenses, and the Court has consistently held that it does not have to consider such an issue of its own motion.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 6 para. 1 (art. 6-1);
2. Holds that the respondent State is to pay the applicant, within three months, 3,000,000 (three million) Italian lire in respect of non-pecuniary damage;
3. 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 24 August 1993.

Signed: Rolv RYSSDAL  
President

Signed: Marc-André EISSEN  
Registrar