

In the case of *Scopelliti 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 24 May and 27 October 1993,

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

Notes by the Registrar

* The case is numbered 41/1992/386/464. 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.

PROCEDURE

1. The case was referred to the Court by the Italian Government ("the Government") on 28 October 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. 15511/89) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by an Italian national, Mrs Antonia Scopelliti, on 6 April 1989.

The Government's application referred to Articles 44, 45 and 48 (art. 44, art. 45, art. 48) and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the application 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 she wished to take part in the proceedings and designated the lawyer who was to represent her (Rule 30). The President of the Court gave her lawyer leave to use the Italian language (Rule 27 para. 3).

3. 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 25 November 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely 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 (Rule 22 paras. 1 and 2 and Rule 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of 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 the applicant's memorial on 10 February 1993 and a statement of her costs and expenses on 4 March. The Government filed their memorial on 8 March. The Delegate of the Commission did not submit written observations.

5. On 1 February 1993 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 24 May 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr G. Raimondi, magistrato, on secondment to the Diplomatic Legal Service of the Ministry of Foreign Affairs,	Co-Agent,
Mr L. Salazar, magistrato, on secondment to the Ministry of Justice,	Counsel;

(b) for the Commission

Mr F. Ermacora,	Delegate;
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(c) for the applicant

Mr M. Miccoli, avvocato,	Counsel.
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The Court heard addresses by the above-mentioned representatives, as well as their answers to its questions.

The representatives of the Government and of the applicant produced various documents at the conclusion of the hearing.

AS TO THE FACTS

7. Mrs Antonia Scopelliti lives in Reggio di Calabria.

8. On 10 December 1980 she instituted proceedings against the A.N.A.S. (Azienda Nazionale Autonoma Strade - National Highways Corporation) and the Ministry of Public Works in the Catanzaro District Court. She sought compensation for damage deriving from the unauthorised occupation by the A.N.A.S. of approximately 1,000 m² of land belonging to her, which had been used to improve a trunk road.

9. The case was entered on the list on 15 December 1980 and a first hearing was held on 27 January 1981. On that date the investigating judge ordered an expert report and set the following hearing down for 17 February 1981. This hearing had to be postponed - on account of the failure to notify the order to the expert; the

hearing scheduled for 10 March 1981 was also postponed.

10. On 24 March 1981 the expert took the oath and was given ninety days within which to file his report. He did not comply with this time-limit, with the result that the proceedings were adjourned on a number of occasions (7 July 1981, 12 January, 9 March, 20 April, 11 May and 13 July 1982).

11. The expert submitted his report on a date which has not been specified, prior to the hearing on 14 December 1982, which was adjourned, as were those set down for 15 March and 22 April 1983.

12. The case was referred to the competent chamber of the District Court on 3 May 1983. The A.N.A.S., the defendant, filed its final submissions on 10 November 1983.

Subsequently the hearings set down for 23 November 1983, 27 June and 7 November 1984, 27 March and 27 November 1985, 26 February, 16 April, 2 July and 3 December 1986 were all adjourned at the joint request of the parties. According to the applicant, these delays were the result of the continual changes in the composition of the competent chamber, but the Government deny this.

13. In the meantime she had sent two letters requesting that her case be heard more rapidly, one on 24 September 1984 to the President of the Catanzaro District Court and the other on 22 January 1986 to the Principal State Counsel at the Catanzaro Court of Appeal.

14. On 6 and 16 February 1987 the applicant filed her final submissions. On 18 February judgment was reserved.

On 5 October 1987 the Catanzaro District Court gave judgment allowing the applicant's claims and ordering the A.N.A.S. to pay her 212,517,000 lire. This sum represented 17,460,000 lire for the market value of the land in question, 100,605,000 lire for the damage caused to the land adjoining the road and 94,452,000 lire for the prejudice deriving from the unauthorised occupation and the unavailability of the property. In addition, she was awarded a total of 5,085,000 lire for her costs and lawyers' fees. The District Court's decision, which was lodged with the registry on 14 January 1988, became final on 1 March 1989.

PROCEEDINGS BEFORE THE COMMISSION

15. The applicant lodged her application with the Commission on 6 April 1989. She complained of the length of the civil proceedings which she had instituted in the Catanzaro District Court and relied on Article 6 para. 1 (art. 6-1) of the Convention.

16. The Commission declared the application (no. 15511/89) admissible on 1 April 1991. In its report of 1 July 1992 (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). The full text of the Commission's opinion is reproduced as an annex to this judgment*.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 278 of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

AS TO THE LAW

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

17. Mrs Scopelliti claimed that her case had not been heard within a "reasonable time" as required under Article 6 para. 1 (art. 6-1) of the Convention, which is worded as follows:

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

The Government denied this allegation, while the Commission accepted it.

18. The period to be taken into consideration began on 10 December 1980, when the proceedings were instituted against the A.N.A.S. in the Catanzaro District Court, and ended on 1 March 1989, the date on which the District Court's judgment became final (see paragraphs 8 and 14 above). It therefore lasted a little under eight years and three months.

19. 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.

20. The applicant, together with the Commission, denied that the case had been complex and considered that the adjournments had been due to the continual changes in the composition of the relevant chamber of the District Court.

21. The Government invoked the complexity of the expert report, which had justified its belated submission; they also cited the conduct of the parties, who had requested a number of adjournments throughout the period from 23 November 1983 to 18 February 1987 (see paragraphs 12 and 14 above). They pointed out further that neither of the parties had sought to have the expert replaced.

22. Three periods may be distinguished. In the first place the investigation of the case took over two years and three months (27 January 1981 - 3 May 1983); this period was mainly taken up with waiting for the expert report. More than three years and two months (23 November 1983 - 18 February 1987) then elapsed before judgment was reserved in the case. Lastly, the judgment, which was lodged with the registry on 14 January 1988, became final thirteen months and fifteen days later, on 1 March 1989 (see paragraph 14 above).

The respondent State cannot be held responsible for that last delay, since the parties could have shortened it by notifying the decision to each other (Articles 325, 326 and 327 of the Code of Civil Procedure).

23. As regards the first period, the Court accepts that the drawing-up of the expert report gave rise to some difficulties. However, it finds it hard to see why it should have been necessary to wait - at the very least - almost sixteen months for the report (see paragraphs 10 and 11 above). The Court observes that the expert did not seek an extension of the ninety days accorded to him, a time-limit which he had, moreover, himself proposed, and did not appear at the hearing. In addition, it takes the view, contrary to the opinion put forward by the Government, that Mrs Scopelliti was under no obligation to request the investigating judge to replace the expert. In any case such a step would have entailed further delay and the decision fell to the relevant judge, who could take it of his own motion in accordance with Article 196 of the Code of Civil Procedure (see the Capuano v. Italy judgment of 25 June 1987, Series A no. 119, pp. 13-14, para. 31). Finally, the Court points out that the expert was working in the context of judicial proceedings, supervised by a judge, who remained responsible for the preparation and the speedy conduct of the trial (see, as the most recent authority, the Billi v. Italy judgment of

26 February 1993, Series A no. 257-G, p. 89, para. 19).

24. As far as the second part of the proceedings is concerned, it may be seen from the documents in the file, and in particular the records of the hearings, that the adjournments were requested jointly by the parties. At the time Mrs Scopelliti did not challenge the validity of the records. Nevertheless the fact remains that considerable periods of time elapsed between the majority of the adjournments (see paragraph 12 above).

25. The Court reiterates that in Italy civil proceedings are subject to the "principio dispositivo", according to which it is for the parties to take the initiative with regard to the progress of the proceedings. However, that principle does not dispense the courts from ensuring compliance with the requirements of Article 6 (art. 6) as regards reasonable time (see the *Guincho v. Portugal* judgment of 10 July 1984, Series A no. 81, p. 14, para. 32, and the *Capuano* judgment, cited above, Series A no. 119, p. 11, para. 25). In any event, Article 175 of the Code of Civil Procedure provides that the judge responsible for preparing the case for trial "shall take all possible steps to ensure that the proceedings are conducted with the utmost speed and fairness" (see the *Capuano* judgment, cited above, *ibid.*).

26. If the proceedings are considered as a whole, the time which elapsed between 10 December 1980 and 14 January 1988 cannot be regarded as "reasonable". There has therefore been a violation of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

27. 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

28. Mrs Scopelliti claimed in the first place 50,000,000 Italian lire for pecuniary damage and 30,000,000 lire for non-pecuniary damage.

She alleged that the unlawful occupation of her property had caused her damage deriving, on the one hand, from the fact that her land had not been at her disposal and, on the other, from the costs and expenses incurred throughout the domestic proceedings.

29. In the Government's contention, the pecuniary damage sustained was compensated by the sums awarded to the applicant by the Catanzaro District Court. As to any non-pecuniary damage, a finding of a violation would in itself constitute sufficient just satisfaction for the purposes of Article 50 (art. 50).

30. The Delegate of the Commission did not express a view.

31. In the Court's opinion, there is no evidence of any remaining pecuniary damage. The applicant may, however, have suffered non-pecuniary damage, but in the circumstances of the case the finding of a violation of Article 6 para. 1 (art. 6-1) constitutes adequate satisfaction in this respect.

B. Costs and expenses

32. Mrs Scopelliti sought in addition 11,546,310 lire for costs and expenses referable to the proceedings before the Convention institutions.

The Government and the Delegate of the Commission did not submit observations on this matter.

33. Having regard to the criteria which it applies in this field, the Court allows the applicant's claim.

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 finding of this violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained;
3. Holds that the respondent State is to pay to the applicant, within three months, 11,546,310 (eleven million five hundred and forty-six thousand three hundred and ten) lire for costs and expenses;
4. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 November 1993.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar