CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

AFFAIRE ZUBANI c. ITALY (Article 41)

(Requête n° 14025/88)

CASE OF ZUBANI v. ITALY (Article 41)

(Application no. 14025/88)

ARRÊT/JUDGMENT

STRASBOURG

16 juin/June 1999

In the case of Zubani v. Italy,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), as amended by Protocol No. 11[1], and the relevant provisions of the Rules of Court[2], as a Grand Chamber composed of the following judges:

Mrs E. PALM, *President*,
Mr A. PASTOR RIDRUEJO,
Mr G. BONELLO,
Mr J. MAKARCZYK,
Mr R. TÜRMEN,
Mr J.-P. COSTA,
Mrs V. STRÁŽNICKÁ,
Mr C. BÎRSAN,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mr V. BUTKEVYCH,
Mr J. CASADEVALL,
Mrs H.S. GREVE,
Mr A. BAKA,
Mr R. MARUSTE,
Mrs S. BOTOUCHAROVA,
Mr C. RUSSO, *ad hoc judge*,

and also of Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 28 April 1999 and on 9 June 1999,

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

PROCEDURE AND FACTS

1. The case was referred to the Court, as established under former Article 19 of the Convention[3], by the European Commission of Human Rights ("the Commission") on 29 May 1995, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 14025/88) against the Italian Republic lodged with the Commission under former Article 25 by four Italian nationals

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Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. As applicable before the entry into force of Protocol No. 11 and the establishment of a Court functioning on a permanent basis (Article 19 of the Convention, as amended by Protocol No. 11).

Mrs Maddalena Zubani, Mrs Letizia Zubani, Mrs Angela Zubani and Mr Aldo Zubani, on 26 January 1988. Having originally been designated "A.Z. and Others", the applicants subsequently agreed to the disclosure of their names.

2. In its judgment of 7 August 1996 ("the principal judgment"), the Court held that there had been a breach of Article 1 of Protocol No. 1 notably owing to the length of the proceedings which the applicants had brought after the unlawful occupation of their land, which had become difficult to farm as a result of changes made in connection with the building of housing (*Reports of Judgments and Decisions* 1996-IV, p. 1078, § 49).

3. The applicants claimed several thousand million Italian lire (ITL) by way of just satisfaction under former Article 50 of the Convention for the damage they had sustained and costs and expenses. However, as the participants in the proceedings had not provided precise information on the question of the application of former Article 50, the Court reserved that issue in full and invited the Government and the applicants to submit, within three months, their written observations on the matter and, in particular, to notify the Court of any agreement they might reach (ibid., p. 1079, §§ 52 and 53, and point 3 of the operative provisions).

4. The Government lodged their observations on 3 October and 5 November 1996 and the applicants lodged their observations on 8, 18 and 22 November 1996. On 10 December 1996 the Delegate of the Commission submitted his observations recommending an award of not less than ITL 200,000,000 to each applicant for pecuniary and non-pecuniary damage.

5. The documents produced by the parties show that on 10 November 1996 the applicants appealed against the judgment of the Brescia District Court of 26 April 1995 seeking increased awards under all their heads of claim. The Municipality entered an appearance on 18 December 1996. On an unspecified date the court of appeal ordered that pleadings be filed by 4 June 1997. The applicants lodged their pleadings on 4 May 1997.

6. As regards the proceedings instituted by the applicants in January 1996 (ibid., p. 1074, § 30), the Municipality, on an unspecified date, contested the application for an attachment. On 21 May 1996 the Brescia district judge ordered the Municipality to pay ITL 47,000,000 and to reimburse costs and expenses of ITL 1,000,000.

7. On 28 June 1997, after consulting the parties and the Delegate of the Commission, Mr R. Bernhardt, the Vice-President of the Court at the time and President of the Chamber dealing with the case, granted the Government's application for a stay of the proceedings on the ground that the domestic proceedings had reached a crucial stage.

8. The Government and the applicants sent the registry a number of documents, with commentaries, between February 1997 and June 1998. The documents indicate that the proceedings pending before the court of appeal and the Brescia district judge were stayed under Article 301 of the Code of Civil Procedure (CCP) owing to the death of the applicants' counsel on 15 May 1998.

9. On 25 September 1998 the Court, being of the view that the material on the case file was insufficient to enable it to deliver judgment, decided to ask the parties to lodge with the registry, within six weeks, any relevant information they had regarding progress in the pending domestic proceedings together with final proposals for a possible friendly settlement.

10. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr B. Conforti, the judge elected in respect of Italy (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr. L. Wildhaber, the President of the Court, Mrs E. Palm the Vice-President of the Court, Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr A. Pastor Ridruejo, Mr G. Bonello, Mr J. Makarczyk, Mr R. Türmen, Mrs V. Strážnická, Mr P. Lorenzen, Mr V. Butkevych, Mr J. Casadevall, Mrs H.S. Greve, Mr A. Baka, Mr R. Maruste and Mrs S. Botoucharova (Rule 24 § 3 and Rule 100 § 4). Subsequently Mr Conforti, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Mr C. Russo to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

11. The President decided that there was no need to invite the Commission to appoint a Delegate in the present case (Rule 99).

12. After consulting the Agent of the Government and the applicants the Grand Chamber decided not to hold a hearing.

13. The Government's observations were received by the registry on 11 March 1999, after two extensions had been given by the Court to the period fixed on 25 September 1998 (see paragraph 9 above). The applicants had lodged their observations on 18 January 1999. It appears from these observations that the proceedings in issue were not revived within the six-months' time-limit laid down by Article 305 of the CCP and have therefore lapsed.

14. Subsequently, as Mr Wildhaber was unable to take part in the further consideration of the case, his place as President of the Grand Chamber was taken by Mrs Palm (Rule 10); Mr C. Bîrsan, substitute judge, replaced him as a member of the Chamber (Rule 24 § 5 (b)).

FINAL SUBMISSIONS TO THE COURT

15. The applicants invited the Court to decide the case finally by awarding them ITL 2,000,000,000 for damage and costs and expenses.

16. The Government considered that figure unreasonable and invited the Court to take into account when assessing quantum, the fact that the plots of land returned to the applicants (and for which building permission was now available) had increased in value, and the sum paid in 1995 by the Municipality of Brescia.

AS TO THE LAW

17. Under Article 41 of the Convention,

> "If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage and costs and expenses

18. The applicants asked the Court to award them 2,000,000,000 Italian lire (ITL) for the damage they had sustained and the costs and expenses they had incurred as a result of the violation of Article 1 of Protocol No. 1. In support of their claim they pointed to the fact that they had had to bring several sets of what had been lengthy proceedings before the national courts. They added that the Brescia municipal authority's refusal to comply with the domestic courts' orders for the return of their land had left them feeling anxious and powerless. Lastly, they maintained that the sum received in 1995 was insufficient.

19. The Government stressed that the Municipality's occupation of the applicants' land in 1980 had been in the public interest and asserted that as a result of the urban-development works carried out on the site the applicants had made a substantial capital gain, as they had been able to sell as building land some of the plots that had been returned, and it would in practice be possible to build on the remaining plots. Consequently, they invited the Court to find that the alleged loss had been sufficiently compensated for by the amount paid pursuant to the Brescia District Court's order of 26 April 1995. Even if the Court did not fully accept those arguments, it should nonetheless take them into account when determining how much, if anything, to award as just satisfaction.

20. The Court observes that in its principal judgment (p. 1078, § 49) it based its finding of a violation of Article 1 of Protocol No. 1 on the following considerations:

> "The Court shares the view ... that the legislature might reasonably choose to give preference to the interests of the community in cases of unlawful expropriation or occupation of land. Full compensation for the damage sustained by the proprietors concerned constitutes sufficient reparation as the authorities are required to pay an additional sum corresponding to monetary depreciation since the day of the unlawful action. Nevertheless the Law in question did not enter into force until 1988, when the litigation concerning the applicants' property had already lasted eight years..."

After noting that the Municipality appeared reluctant to pay the compensation in full, the Court went on to say:

> "As regards finally the remaining argument of the respondent Government, the Court considers that the size of the sum awarded by the Brescia District Court cannot be decisive in this case in view of the length of the proceedings instituted by the Zubanis.
>
> The Court confines itself to noting that, although the sum of 1,015,255,000 lire may appear enormous in relation to the surface area actually occupied by the buildings, an additional factor to be borne in mind was that a new road was laid through the applicant's property – 21,960 square metres which they used to raise livestock – and this rendered access to the plots returned to them difficult."

21. The Court considers that it must also take into account the fact that the applicants had brought a large number of proceedings over an eighteen-year period and had had to bring fresh proceedings in January 1996 for the recovery of part of the sum in issue that had been wrongfully withheld by the Municipality (see paragraph 6 above). However, while the urban-development works on the land concerned and the applicants' recent sale of some of the plots returned do not suffice to negate the consequences of the violation of Article 1 of Protocol No. 1 either, they must be taken into consideration when assessing the amount of just satisfaction to be awarded to the applicants.

22. In the light of all the foregoing, the Court finds that the applicants, who are all aged over eighty, have undoubtedly sustained losses that were compounded by the length of time for which they were deprived of possession of their property, their reduced ability over a long period to use it as they wished and the feelings of frustration and anxiety caused by uncertainty over the outcome of the national proceedings and by the conduct of the Municipality of Brescia.

As the respondent Government have not made sufficient reparation for those losses, the Court, ruling on an equitable basis in accordance with Article 41 of the Convention, awards the four applicants an overall sum of ITL 1,000,000,000 for pecuniary and non-pecuniary damage.

23. As regards costs and expenses, the Court notes, firstly, that the applicants were in receipt of legal aid before the Court. It adds that under its case-law an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see, among other authorities, the Musial v. Poland judgment of 25 March 1999, § 61). Furthermore, by Rule 60 § 2 of the Rules of Court, itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see the Buscarini and Others v. San Marino judgment of 18 February 1999, § 48). As the applicants have not furnished the relevant details and evidence, the Court dismisses their claim for reimbursement of their costs and expenses.

B. Default interest

24. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 2.5% per annum.

FOR THESE REASONS THE COURT UNANIMOUSLY

1. *Holds*
   (a) that the respondent Government is to pay the applicants, within three months, for pecuniary and non-pecuniary damage, 1,000,000,000 (one thousand million) Italian lire;
   (b) that simple interest at an annual rate of 2.5% shall be payable from the expiry of the above-mentioned three months until settlement;
2. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English and in French, and communicated in writing pursuant to Rule 77 §§ 2 and 3 of the Rules of Court on 16 June 1999.

Signed: Elisabeth PALM
President

Signed: Paul MAHONEY
Deputy Registrar