

APPLICATION/REQUÊTE N° 14660/89

Serafina PRISCA, Pierluigi and Enrico DE SANTIS v/ITALY

Serafina PRISCA, Pierluigi et Enrico DE SANTIS c/ITALIE

DECISION of 10 October 1991 on the admissibility of the application

DÉCISION du 10 octobre 1991 sur la recevabilité de la requête

Article 6, paragraph 1 of the Convention *Reasonable time (civil)*

In this case, the period to be examined commences with the taking effect of the defendant State's recognition of the right of petition

*When the Commission, by reason of its competence *ratione temporis*, can only examine part of the proceedings, it can take into account in order to assess the length, the stage reached in the proceedings at the beginning of the period under consideration*

Article 25, paragraph 1 of the Convention *With regard to the length of proceedings relating to a damages claim to which the applicant became a party following the death of original party, the applicant as heir may also complain about the length of the proceedings prior to his becoming a party*

(TRANSLATION)

THE FACTS

The facts, as submitted by the parties, may be summarised as follows

The applicants, Serafina Prisca, the widow of Cesare De Santis, and her two children Pierluigi and Enrico De Santis, are Italian nationals, born in 1920, 1960 and 1962 respectively and resident in Rocca di Papa

Before the Commission they are represented by Mr Paolo Iorio, a lawyer practising in Rome

An action was brought on 16 October 1968 in the Rome District Court against Cesare De Santis, the husband and father of the applicants, the province of Rome and other defendants, by the owner of a piece of adjoining land, who sought compensation for the damage which he had suffered through unauthorised tipping

The investigation began at a hearing of 29 November 1968 and continued until 24 March 1976, when judgment was reserved

During this period the reporting judge held numerous hearings

The parties requested a number of adjournments (first from 19 February 1969 to 14 May 1969, then to 16 July 1969, 26 November 1969, 11 February 1970 and 6 May 1970 , later on from 17 February 1973 to 16 May 1973, 4 July 1973 and 24 November 1973) on no particular grounds

Moreover, between 24 November 1971 and 29 November 1972 the proceedings remained in abeyance pending a decision by the reporting judge whether to join them to a related set of proceedings the plaintiff having requested such joinder on 24 November 1971

The expert's report requested of the expert on 11 December 1974 was filed on 30 September 1975

In the course of the other hearings the parties submitted various requests relating to evidence (witness hearings, site inspection), filed pleadings and made final submissions

After judgment had been reserved on 24 March 1976 the court decided, on 28 November 1976, to order a further expert opinion. Once this had been prepared the

case was referred back to the court on 15 December 1978. The court gave judgment on 23 February 1979, but this judgment was not deposited with the registry until 28 July 1979

The plaintiff appealed against the above judgment on 18 July 1980. The reporting judge at the Court of Appeal held hearings on 6 November 1980, 26 March 1981, 11 July 1981 and 16 July 1981. On the last-mentioned date he set down the case for trial by the court at the hearing of 26 May 1982. The case was in fact examined at the hearing of 9 June 1982, when the court decided that it had to order a further expert opinion, at the appellant's request. An expert was appointed on 4 August 1982. After that date the Government have mentioned various adjournments requested by the parties to the proceedings, who eventually made their final submissions at the hearings of 27 September and 29 November 1984.

The husband of the first applicant and father of the other two applicants died in the course of the proceedings, on 31 August 1985. The date on which the applicants became parties to the proceedings is unclear either from the documents in the file or from the parties' observations.

The case was tried at hearings of 5 November and 21 November 1986. Judgment was delivered on 21 November 1986 and deposited with the registry on 8 April 1987. The applicants were ordered to pay damages. On 26 November 1987 notice was given to the applicants of the plaintiff's appeal to the Court of Cassation, which concerned the other defendants only. With regard to the applicants, the judgment of the Court of Appeal was endorsed with a writ of execution on 10 June 1987 and served on the applicants on 29 January 1988.

COMPLAINTS

The applicants complain of the length of the proceedings and allege a violation of Article 6 para. 1 of the Convention.

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THE LAW (Extract)

The applicants complain of the length of the proceedings and rely on Article 6 para. 1 of the Convention, under which everyone is entitled to "a hearing within a reasonable time".

The Commission notes that the proceedings concerned an action for compensation in respect of the damage caused by unauthorised tipping.

With regard to the period to be considered, the Commission notes that the writ summoning the husband of the first applicant and father of the second and third applicants to appear in the Rome District Court, which marks the commencement of the proceedings, was dated 16 October 1968. The Rome District Court gave judgment on 23 February 1979 and the text of this judgment was deposited with the registry on 28 July 1979.

The Rome Court of Appeal ruled on an appeal lodged by the plaintiff in a judgment dated 21 November 1986, deposited with the registry on 8 April 1987.

According to the applicants, this period of time cannot be regarded as "reasonable" within the meaning of Article 6 para. 1 of the Convention.

The Government take the opposite view.

The Commission notes in the first place that the period to be considered began only on 1 August 1973, when the recognition by Italy of the right of individual petition took effect; however, in assessing the reasonableness of the time that elapsed after 31 July 1973, account must be taken of the then state of proceedings (cf. Eur. Court H.R., judgment of Foti and Others of 10 December 1982, Series A no. 56, p. 18, para. 53).

The Commission further notes that the applicants did not become parties to the proceedings until after the death of their husband and father on 31 August 1985. The question therefore arises whether the applicants can complain of the length of that part of the proceedings conducted before they personally became parties to them.

In that connection, the Commission notes that the applicants succeeded to all the rights and obligations of the deceased and became parties to the Italian proceedings after his death. In that capacity they can assert the deceased's right under Article 6 para. 1 of the Convention to a final decision within a reasonable time in the determination of his civil rights and obligations.

In their capacity as heirs they can therefore complain to the Commission of the total length of the proceedings conducted in the Italian courts.