

In the Capuano case*,

* Note by the Registrar: The case is numbered 7/1986/105/153. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

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. J. Cremona,
Mrs. D. Bindschedler-Robert,
Mr. F. Matscher,
Mr. L.-E. Pettiti,
Mr. C. Russo,
Mr. J. Gersing,

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

Having deliberated in private on 31 January and 19 May 1987,

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

PROCEDURE

1. The present case was brought before the Court by the European Commission of Human Rights ("the Commission") on 28 January 1986, within the three-month period laid down in Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 9381/81) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by Mrs. Gloria Capuano, who is an Italian national, on 21 December 1980.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the Italian declaration recognising the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision from the Court as to whether or not the facts of the case disclosed a breach by the respondent State of one of its obligations under Article 6 § 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant stated that she wished to take part in the proceedings pending before the Court and designated the lawyer who would represent her (Rule 30).

3. On 17 March 1986, the President of the Court decided that one and the same Chamber of seven judges should consider the Capuano, Baggetta and Milasi cases (Rule 21 § 6). The Chamber included, as *ex officio* members, 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 § 3 (b)). On 19 March 1986, the President of the Court drew by lot, in the presence of the Registrar, the names of the other five members, namely Mr. J. Cremona, Mrs. D. Bindschedler-Robert, Mr. F. Matscher, Mr. L.-E. Pettiti and Mr. J. Gersing (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

4. On 25 March 1986, the President of the Court granted the applicant leave to use the Italian language (Rule 27 § 3). On 8 May, he granted her free legal aid (Rule 4 of the Addendum to the Rules of Court).

5. Mr. Ryssdal who had assumed the office of President of the Chamber (Rule 21 § 5) consulted, through the Registrar, the Agent of the Italian Government ("the Government"), the Commission's Delegate and the applicant's lawyer on the need for a written procedure (Rule 37 § 1). On 2 April, he decided that the said Agent and lawyer should each have until 2 June 1986 to submit memorials and that the Delegate should be entitled to reply within two months.

The applicant's memorial arrived on 28 May 1986 and the Government's on 4 June. On 21 July, the Deputy Secretary to the Commission indicated that the Delegate would not be submitting one. On 16 September, the Registrar received the Government's observations on the applicant's claims under Article 50 (art. 50) of the Convention.

6. On 17, 19 and 20 November, the Federation of Italian Lawyers' Unions, the Italian Association of Young Barristers and the Rome Lawyers' Association sought leave to submit written comments (Rule 37 § 2). On 29 November, the President granted leave, on certain conditions, to the last-mentioned of these organisations, whose memorial reached the registry on 30 December 1986.

7. On 28 November 1986, after consulting, through the Registrar, the Agent of the Government, the Commission's Delegate and the applicant's lawyer, the President directed that the oral proceedings should open on 26 January 1987 (Rule 38).

8. The hearings were held in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr. L. Ferrari Bravo, Head of the Diplomatic Legal Service of the
Ministry of Foreign Affairs, Agent,

Mr. D. Striani, avvocato,

Mr. G. Grasso, avvocato, Counsel;

- for the Commission

Mr. A. Weitzel, Delegate;

- for the applicant

Mr. A. Sinagra, avvocato, Counsel.

The Court heard addresses by Mr. Ferrari Bravo, Mr. Striani and Mr. Grasso for the Government, by Mr. Weitzel for the Commission and by Mr. Sinagra for Mrs. Capuano, as well as their replies to its questions. The Government and the applicant produced documents at the hearing.

On 19 February and 23 March 1987, the registry received additional replies from the Government and the applicant.

AS TO THE FACTS

9. Mrs. Gloria Capuano lives in Rome. On 24 July 1971, she

purchased a small flat with a terrace at Villamare de Vibonati (Potenza) for her holidays. It was part of a sea-front building that was due to be renovated as shown in a plan appended to the contract of sale. The declared price was 700,000 LIT. In the same contract she covenanted to grant the vendor, Mr. P. (who at the time was the sole owner of the building), and his heirs and other beneficiaries a right of way over the terrace, which provided a secondary means of direct access to the beach.

During the renovations, Mr. P. created four flats, which he sold. He did not adhere to the original plan, however; in particular, he removed the building's main access to the beach, so that Mrs. Capuano's terrace became the sole means of access.

10. The applicant considered that the works that had been carried out increased the burden of the easement and she instituted legal proceedings.

She applied first to the Sapri (Potenza) Magistrate's Court (pretore), where she laid an information against the vendor that he had acted without the authorisations required by law. She could not, however, sue for civil damages in the criminal proceedings: since the alleged offences related to non-compliance with administrative formalities, she could not personally claim to be the victim. On 9 March 1974, the Magistrate's Court imposed a fine on Mr. P.

11. Having been unable to obtain compensation, Mrs. Capuano started proceedings in the civil courts. On 10, 13 and 15 November 1976, she summoned Mr. P. and the four people who had bought the flats to appear on 10 January 1977 at the Lagonegro (Potenza) District Court. She sought an order that the works which had resulted in the unreasonable increase in the burden of the easement on her property should be demolished.

12. The preliminary hearing began on the appointed day. Counsel for the applicant, however, applied for an adjournment so that a summons could be served on one of the four purchasers who lived in Rome but whom the bailiff had not been able to find as his exact address was unknown.

The trial was postponed to 19 April 1977, when it had to be further adjourned in accordance with Article 301 of the Code of Civil Procedure, as the applicant's counsel had died and the court had not yet been informed of the appointment of the new lawyer instructed by Mrs. Capuano on 13 April 1977. On 1 June, the applicant's counsel asked for the trial to be resumed, and the case was set down for hearing on 20 September. When that day arrived, he applied for an adjournment in order to be able to submit evidence.

At the following hearing, on 29 November 1977, he applied for an opinion to be sought from an expert (Articles 61-64 and 191-201 of the Code of Civil Procedure), saying that he would indicate later the questions to be put to the expert. The hearing was postponed to 24 January 1978, but did not take place until 31 January, because of a further adjournment due to municipal elections. Mrs. Capuano's lawyer specified the matters he thought should be dealt with by the expert, and after discussion between counsel for the two sides the judge appointed an expert and directed that he should be sworn in and given his terms of reference on 14 March 1978.

13. On the appointed day, the judge gave the expert sixty days to submit his report and directed that the hearing for discussion of the report should take place on 23 May 1978.

The expert went to inspect the premises on 24 April 1978, but although the interested parties were present, the inspection had to be postponed until 17 May as it proved impossible to gain access to the

whole building.

The hearing fixed for 23 May 1978 could not be held owing to the unavoidable absence of the judge, and it began a few days later; but counsel for the applicant applied for an adjournment, as the expert had still not filed his report. This did not arrive until 5 January 1979, with the result that the hearings set down for 4 July, 31 October and 14 December 1978 likewise had to be postponed.

14. In the meantime, on 12 July, a new judge had been appointed to prepare the case for trial.

The hearing set down for 6 February 1979 did not take place. At the following hearing, on 12 June 1979, the defendants challenged the report and asked for time to produce an opinion by an expert of their own. Mrs. Capuano, for her part, asked the judge to give the expert fresh instructions - that he should indicate the work needed in order to remedy the changes made by Mr. P. On 9 October 1979, counsel for Mrs. Capuano reiterated this request, while the defendants asked for time to study it and give their view.

At the hearing on 13 November 1979, counsel for one of the defendants filed the opinion of a privately retained expert and asked for an inspection of the premises. Mrs. Capuano's lawyer objected, and the judge reserved his decision.

On 18 December 1979, the judge postponed consideration of the case until 12 February 1980, as the parties had requested. On that date, the applicant's counsel in turn submitted the opinion of a privately retained expert.

15. On 1 April 1980, the judge ordered that the supplementary expert opinion should be taken, further reserved his decision as to an inspection of the premises, and directed that the expert should be asked to appear on 6 May 1980. On that date, the judge gave him his terms of reference. The expert asked for sixty days to complete his work. Examination of the case was accordingly postponed until 15 July 1980.

The hearings set down for 15 July, 21 October and 16 December 1980 had to be postponed, as the expert had not submitted his report. On the judge's instructions, the registry asked on three occasions for the report to be filed - on 17 December 1980 in time for 10 February 1981, on 12 February within the next twenty days, and on 14 April for 19 May 1981 - but to no avail, and each time a postponement resulted.

In the meantime, the judge responsible for preparing the case for trial was transferred to other duties, and no further action was taken in the case until 23 February 1982, when consideration of the case had to be postponed until 4 May.

16. Eventually, however, the expert submitted his report, dated 25 March 1982. At the hearing on 4 May, counsel for Mrs. Capuano asked the court to determine the merits of the case. The opposing side asked for time to reply. On 29 June, counsel for the applicant again asked the judge to give a decision, but one of the defendants asked for an inspection of the premises and reserved the right to submit an opinion by a privately retained expert. On 19 October, he was granted time to file an opinion, which he did on 14 December. Thereupon, counsel for the applicant likewise asked for time to reply, and the case was postponed until 18 January 1983.

On that date, the judge ordered an inspection of the premises. He revoked his decision, however, on 2 February 1983 and set 1 March as the date for hearing the expert. As Mrs. Capuano was not told of this change of date, she travelled to Villamare de Vibonati unnecessarily.

17. On 1 March, the judge responsible for preparing the case heard the expert and postponed hearing argument by counsel to 29 March. At this last hearing the parties duly made their submissions to the court, which declared the case ready for decision.

The judgment was delivered on 14 July 1983 and filed with the registry on 20 July. Mr. P. lodged an appeal, and two other defendants and the applicant cross-appealed.

18. Mr. P. summoned the other parties to appear at the Potenza Court of Appeal on 6 March 1984. Thereupon, the judge responsible for preparing the case for trial postponed consideration of it to 8 May 1984, and then to a later date as notice of the appeal had not been served on one of the parties concerned.

At the following hearing, on 9 October, counsel for Mr. P. and for Mrs. Capuano both requested that a date should be set for a hearing so that they could make their submissions; another lawyer asked for time to study new documents produced by the applicant. Hearings took place on 27 November 1984 and 25 January 1985. The judge responsible for preparing the case brought it before the court, which decided on 23 April that further inquiries were necessary, despite objections by counsel for Mrs. Capuano.

Witnesses were due to be heard on 19 November 1985, but the applicant's counsel fell ill. At the hearing on 10 December, one of the witnesses failed to appear and counsel for Mr. P. asked for evidence to be taken from other witnesses. At the hearing on 18 February 1986, one witness was again absent, and the court ordered the police to bring the person concerned before the court on 29 April, when he did indeed appear.

After initially being set down for 17 June 1986 and then 19 November, the hearing finally took place on 29 April 1987; the parties had exchanged pleadings on 3 February. According to the information before the European Court, the Court of Appeal has not yet given judgment.

PROCEEDINGS BEFORE THE COMMISSION

19. Mrs. Capuano applied to the Commission on 21 December 1980 (application no. 9381/81). She complained that she had been refused leave to sue for civil damages in the criminal proceedings taken against the vendor in respect of an offence against planning legislation. She also complained of the slowness of the civil proceedings she had instituted against the vendor.

20. On 3 October 1983, the Commission declared the application admissible as to the latter complaint, and inadmissible as to the former. In its report of 15 October 1985 (made under Article 31 of the Convention) (art. 31), it expressed the unanimous opinion that there had been a breach of Article 6 § 1 (art. 6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment.

AS TO THE LAW

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

21. According to the applicant, the hearing of her civil action had taken longer than the "reasonable time" envisaged in Article 6 § 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 contested this allegation, whereas the Commission

accepted it.

A. Period to be considered

22. There was no dispute as to the period to be considered. It began on 10 January 1977, when the defendants were due to appear before the court, Italian law leaving it to the plaintiff to indicate the date for the initial hearing of the summons. It has not yet ended, since the proceedings are still pending.

What is involved is therefore a lapse of time that already exceeds ten years and four months (10 January 1977 - 19 May 1987).

B. Reasonableness of the length of the proceedings

23. The reasonableness of the length of proceedings has to be assessed according to the circumstances of the case and having regard to the criteria laid down in the Court's case-law (see, amongst other authorities, the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 11, § 24).

24. The Government emphasised that in Italy the procedure in civil cases was governed by the "principle of determination" (*principio dispositivo*), which means that the initiative and the power of advancing matters rest with the parties. They cited by way of example Articles 99, 115 and 306 of the Code of Civil Procedure.

This contention was disputed by the applicant's lawyer. According to him, it was only the setting of the starting-point of a civil action which was left to the parties, and not the conduct of the whole trial. He maintained that this was demonstrated by Article 175 of the Code of Civil Procedure and Article 81 of the rules on the application of that Code.

25. The Convention admittedly does not prevent the Contracting States from basing their civil procedure on the aforesaid principle, but the principle does not dispense the courts from ensuring compliance with Article 6 (art. 6) as to the "reasonable time" requirement (see, *mutatis mutandis*, the Guincho judgment of 10 July 1984, Series A no. 81, p. 14, § 32). Indeed, under Article 175 of the Italian Code of Civil Procedure the judge responsible for preparing the case for trial shall take all possible steps to secure that the proceedings are conducted with the utmost speed and fairness.

1. Complexity of the case

26. The Court considers, as did the applicant and the Commission, that the case was not complex either as regards the facts or as regards the relevant law.

2. Conduct of the applicant

27. The Commission attributed to Mrs. Capuano a delay of about one year; it concluded that, apart from this, she had shown "due diligence".

The applicant asserted that she could not be held responsible for the delay due to the death of her counsel, for the delay of some four months (1 June - 20 September 1977) in connection with the resumption of the trial or for the lapse of time between 20 September and 29 November 1977 (see paragraph 12 above).

For the Government, on the other hand, Mrs. Capuano's conduct was the cause not only of the aforesaid delays but also of many others. This was especially true of the adjournments requested by her counsel in order to provide further particulars of the evidence to be submitted on her behalf and of the postponements of hearings sought by agreement

between the parties or, alternatively, by the defendants without any objection on the part of the applicant's counsel.

28. To a large extent the Court shares the Commission's view. Whilst Mrs. Capuano cannot be held responsible for the delay due to her lawyer's death, the same does not apply to certain other factors that contributed to the slowness of the proceedings. For example, although her new counsel was instructed by her on 13 April 1977, he waited for more than two months before asking for the trial to be resumed (see paragraph 12 above). Subsequently, on 20 September 1977, he applied for an adjournment in order to be able to submit evidence and then, on 29 November, asked for an opinion to be sought from an expert, but without indicating the questions to be put to him (*ibid.*); this occasioned a further delay of some four months.

On the other hand, the Court, unlike the Commission, cannot attribute to the applicant the postponements granted on 9 October 1979 and 19 May 1981 (see paragraphs 14 and 15 above): the first postponement had been asked for by counsel for one of the defendants and the second was ordered because, for reasons which are not apparent from the file, the hearing initially scheduled was not held.

Similarly, the criticisms levelled by the Government against Mrs. Capuano concerning various other periods are not relevant to the extent that those periods related to applications for postponement made by defendants.

In conclusion, the applicant was responsible to a certain degree for the prolongation of the proceedings (see the Pretto and Others judgment of 8 December 1983, Series A no. 71, p. 15, § 34).

3. Conduct of the judicial authorities

29. According to the Commission, the conduct of the judicial authorities gave rise to continual delays. In the Court's view, a distinction has to be drawn between the first-instance proceedings (10 December 1977 - 20 July 1983: see paragraphs 11-17 above) and the appeal proceedings (21 July 1983 - 19 May 1987: see paragraphs 18 and 22 above).

(a) First-instance proceedings

30. The proceedings before the Lagonegro District Court lasted for six years, eight months and ten days. Since the case was not complex, a period of this order appears at first sight to be incompatible with the Contracting States' duty under Article 6 (art. 6) to ensure a hearing within a reasonable time; it thus calls for close scrutiny. The Court notes that a substantial part of the period - two years, eleven months and three days - elapsed whilst the two expert opinions were under preparation.

According to the Government, the court concerned bore no responsibility in this latter respect: it was true that each of the opinions was filed late, but the only step which a judge could take against an expert who did not carry out his task with due diligence was to impose a small fine.

The Court does not share this view. In the present case, the expert was acting in the context of judicial proceedings supervised by the judge; the latter remained responsible for the preparation of the case and for the speedy conduct of the trial. As for the sanction which he could impose on the expert, it has to be recalled that in ratifying the Convention Italy undertook the obligation of organising its legal system so as to ensure compliance with the requirements of Article 6 § 1 (art. 6-1), including that of trial within a "reasonable time" (see the above-mentioned Guincho judgment, Series A no. 81, p. 16, § 38).

31. The Government submitted that the applicant should have insisted that the expert be replaced. On this, the Court agrees with the Commission. There is nothing to suggest that his replacement would have eliminated the delays in preparing the opinions. In addition, Mrs. Capuano was under no duty to request the judge to take such a step (see, *mutatis mutandis*, the above-mentioned Guincho judgment, Series A no. 81, p. 15, § 34); besides, the decision rested with him and he could also have taken it on his own initiative (see Article 196 of the Code of Civil Procedure).

The Government also criticised the applicant for not having lodged a complaint against the expert with the public prosecutor's office, pursuant to Article 328 of the Criminal Code. However, such a course, far from expediting the procedure, would probably have lengthened it.

32. Having regard to the limits on the role of the parties to the proceedings, the principal responsibility for the delay due to the expert opinions rests ultimately with the State. It is true that the judge set a time-limit of sixty days for the preparation of each of the opinions; he also called on three occasions for the second of them to be filed, but he did so only after the time-limit had expired and shortly before he was himself transferred to other duties (see paragraph 15 above). And no less than nine months went by before he was replaced; during that time the case was dormant, with the result that no one checked how the expert's work was progressing.

33. As regards the periods between the filing of the first opinion and the decision to order the taking of another (5 January 1979 - 1 April 1980) and between the filing of the second opinion and the filing of the judgment (25 March 1982 - 20 July 1983), the Court notes that the postponements, with the exception of two requested by Mrs. Capuano, were either sought by the defendants or ordered by the judge of his own motion. It also notes that the applicant's counsel twice requested the District Court to give judgment (4 May and 29 June 1982 - see paragraph 16 above).

(b) Appeal proceedings

34. The appeal proceedings were set in motion some four years ago and no judgment on the merits has yet been delivered. This lapse of time, which in itself appears excessive, followed earlier proceedings which had already lasted too long. In these circumstances, the Court sees no need to scrutinise the various phases of the appeal proceedings and, in particular, to express an opinion on the expediency of the decision, taken by the Potenza Court of Appeal in the exercise of its discretion, that further inquiries were necessary.

(c) Conclusion

35. To sum up, even though she was responsible for some of the delays that occurred, Mrs. Capuano's case has not been heard within a reasonable time; there has accordingly been a violation of Article 6 § 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

36. Article 50 (art. 50) of the Convention reads as follows:

"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."

In her memorial of 28 May 1986, Mrs. Capuano claimed just satisfaction of one hundred million lire under various heads; these did not include the costs and expenses incurred before the Convention institutions. At the hearing, her counsel stated that she left the matter to the Court's discretion; however, he requested it to have regard not only to the legal costs borne in Italy but also to the prejudice resulting from the deterioration of the flat in question and the physical and mental stress allegedly occasioned by the length - almost eleven years already - of the proceedings.

The Government emphasised what they saw as a lack of proportion between the amount claimed and the value of the property (see paragraph 9 above). They added that some of the alleged losses could not be taken into account under Article 50 (art. 50) and that others, which anyway had not been proved, had not been caused by the violation complained of.

The Commission was of the opinion that the applicant was entitled to compensation in a significant amount for non-pecuniary damage; it left it to the Court to assess the pecuniary damage.

37. In the Court's view, the only basis for an award of just satisfaction for pecuniary damage in the present case lies in the fact that the "reasonable time" envisaged in Article 6 § 1 (art. 6-1) was exceeded (see, for example, the Lechner and Hess judgment of 23 April 1987, Series A no. 118, p. 22, § 64). This increased Mrs. Capuano's costs and expenses in Italy, and she may in addition have suffered other financial losses; these points have to be taken into account.

The applicant also undoubtedly sustained non-pecuniary damage, in that she was left in prolonged uncertainty and anxiety as to the outcome and repercussions of the proceedings (ibid.).

These various factors do not lend themselves in the present case to precise quantification. Taking them together and, as required by Article 50 (art. 50), on an equitable basis, the Court awards Mrs. Capuano compensation of eight million lire.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 § 1 (art. 6-1);
2. Holds that the respondent State is to pay to the applicant the sum of eight million lire (8,000,000 LIT) by way of just satisfaction;
3. Rejects 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 25 June 1987.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar