



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

COURT (CHAMBER)

CASE OF GIULIA MANZONI v. ITALY

(Application no. 19218/91)

JUDGMENT

STRASBOURG

1 July 1997

In the case of Giulia Manzoni v. Italy¹,

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 Rules of Court B², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr C. RUSSO,

Mr A. SPIELMANN,

Mr N. VALTICOS,

Mr R. PEKKANEN,

Mr L. WILDHABER,

Mr B. REPIK,

Mr P. KURIS,

Mr U. LOHMUS,

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

Having deliberated in private on 22 February and 2 June 1997,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 28 May 1996 and by the applicant, an Italian national, Mrs Giulia Manzoni, on 7 June 1996, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 19218/91) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by Mrs Manzoni on 2 December 1991.

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), and the applicant's application referred to Article 48 (art. 48) as amended by Protocol No. 9 (P9), which has been ratified by Italy. The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by

¹ The case is numbered 70/1996/689/881. 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.

² Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning the States bound by Protocol No. 9 (P9).

the respondent State of its obligations under Article 5 para. 1 (c) of the Convention (art. 5-1-c).

2. On 7 June 1996 the applicant designated the lawyer who would represent her (Rule 31 of Rules of Court B). He was given leave by the President to use the Italian language (Rule 28 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. 4 (b)). On 10 June 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr N. Valticos, Mr R. Pekkanen, Mr J.M. Morenilla, Mr L. Wildhaber, Mr B. Repik and Mr U. Lohmus (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently Mr A. Spielmann and Mr P. Kuris, substitute judges, replaced Mr Morenilla and Mr Gölcüklü, who were unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Italian Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 22 November 1996 and the Government's memorial on 18 December 1996.

5. On 13 December 1996 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 19 February 1997. 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,
Ministry of Foreign Affairs,

co-Agent,

Mrs M.T. SARAGNANO, magistrato, on secondment
to the Ministry of Justice,

Counsel;

(b) for the Commission

Mr A. WEITZEL,

Delegate;

(c) for the applicant

Mr P. IORIO, of the Rome Bar,

Counsel.

The Court heard addresses by them.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

7. On 25 September 1991 at about 11 p.m. Mrs Manzoni was arrested in Rome for insulting, threatening and assaulting two municipal police officers in the execution of their duty and taken into police custody.

8. The Rome public prosecutor's office, which was immediately informed by telephone, confirmed the police custody and the applicant was taken to Rebibbia Prison.

9. On 26 September 1991 the police forwarded the report on the arrest to the public prosecutor's office, which that same day arranged a hearing for the following morning in the Rome District Court, seeking to have the arrest confirmed (*convalida dell'arresto*).

10. On 27 September 1991 at 11 a.m. the public prosecutor's office also applied for Mrs Manzoni to be detained at her home pending trial (Article 284 of the New Code of Criminal Procedure).

11. After satisfying itself that the relevant statutory formalities in respect of arrest had been complied with (including bringing the applicant before the public prosecutor's office within twenty-four hours of her arrest, drawing up and sending on the police report within the same period and requesting the public prosecutor's office to confirm the arrest within forty-eight hours), the court confirmed the arrest. However, it did not consider it necessary to detain Mrs Manzoni pending trial and ordered that she be released immediately.

12. At the end of proceedings known as "*patteggiamento*" (a shortened form of procedure whereby, at the request of the public prosecutor's office or, as in the present case, of the defendant, the court imposes a sentence agreed on by the public prosecutor's office and the defendant) the court sentenced the applicant to three months and eleven days' imprisonment, suspended.

13. The hearing ended at 11.45 a.m. At about 1.30 p.m. the police escorted Mrs Manzoni to Rebibbia Prison. At 3.10 p.m. the record of the hearing was served on her by the prison management. That afternoon the prison authorities completed the statutory formalities (accounts, return of effects, notification of release to the police, entry in the prison register). At 6.30 p.m. the applicant gave the prison management her address for notification purposes, and at 6.45 p.m. she left the prison.

II. RELEVANT DOMESTIC LAW

14. The New Code of Criminal Procedure has several provisions that are applicable in the instant case, as set out below:

Article 386

"1. Police officers who have effected an arrest ... shall immediately inform the public prosecutor's office of this ...

3. ... the police officers shall place the person arrested ... at the disposal of the public prosecutor's office within twenty-four hours of the arrest ... They shall send the police report to the public prosecutor's office within twenty-four hours unless the latter grants an extension of time."

Article 390

"1. Within forty-eight hours of the arrest ..., if the public prosecutor's office does not consider it necessary to release the defendant immediately, it shall ask the judge responsible for the preliminary inquiry to confirm the arrest...

2. The judge shall hold the hearing to confirm the arrest as soon as possible, and in any event not more than forty-eight hours after the request for confirmation ..."

Article 391 para. 4

"If the arrest is lawful and the time-limits laid down in Articles 386 para. 3 and 390 para. 1 have been observed, the judge shall confirm the arrest in an order. An appeal on points of law shall lie against that decision ..."

Article 121 of the implementing provisions of the New Code of Criminal Procedure provides:

"... the public prosecutor's office shall order in a reasoned decision the immediate release of the person arrested ... where it does not envisage applying [to the judge] for a preventive measure."

PROCEEDINGS BEFORE THE COMMISSION

15. Mrs Manzoni applied to the Commission on 2 December 1991. Relying on Article 5 para. 1 (a) of the Convention (art. 5-1-a), she complained of the unlawfulness of her detention following her arrest and after a suspended sentence had been imposed on her.

16. The Commission (First Chamber) declared the application (no. 19218/91) admissible on 25 June 1995 after considering it under sub-paragraph (c) of Article 5 para. 1 (art. 5-1-c). In its report of 11 April 1996 (Article 31) (art. 31), it expressed the opinion that there had been no violation of that provision (art. 5-1-c) as regards either the first complaint (unanimously) or the second (eleven votes to four). The full text of the

Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment³.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

17. The Government requested the Court to hold that there had been no violation of Article 5 of the Convention (art. 5).

AS TO THE LAW ALLEGED VIOLATION OF ARTICLE 5 PARA. 1 (c) OF THE CONVENTION (art. 5-1-c)

18. Mrs Manzoni alleged that she had been detained unlawfully following her arrest and the Rome District Court's judgment of 27 September 1991. She relied on Article 5 para. 1 (c) of the Convention (art. 5-1-c), which provides:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence ..."

19. The Government and the Commission did not accept this contention.

A. Deprivation of liberty following the arrest

20. The applicant maintained that as the public prosecutor's office had not envisaged applying to the judge for a preventive measure (her detention in prison) at the hearing to confirm the arrest, it should have ordered her release as soon as the police informed it of her arrest. She relied on Article 121 of the implementing provisions of the New Code of Criminal Procedure.

21. The Court has previously held that detention must be lawful. The words "in accordance with a procedure prescribed by law" essentially refer to domestic law; they state the need for compliance with the relevant

³ For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1997-IV), but a copy of the Commission's report is obtainable from the registry.

procedure laid down in that law. The "lawfulness" of the detention presupposes conformity with domestic law and also conformity with the purpose of the restrictions permitted by Article 5 para. 1 (art. 5-1), namely the protection of individuals from arbitrariness; it is required in respect of both the ordering and the execution of the measures entailing deprivation of liberty (see the *Winterwerp v. the Netherlands* judgment of 24 October 1979, Series A no. 33, p. 17, para. 39).

22. The parties disagree as to the legal classification of detention at home. The Court notes that Article 284 in Part II of the New Code of Criminal Procedure classifies this measure as one of the preventive measures against individuals, the others being a ban on permanently leaving the country (Article 281), an obligation to report to the police (Article 282), a ban on residing in or obligation to reside in a particular place (Article 283) and detention pending trial in prison or in a psychiatric hospital (Articles 285 and 286). Although these measures are of varying degrees of severity, as the Government and the Delegate of the Commission rightly pointed out, they all restrict individual liberty to a greater or lesser extent.

In the instant case the public prosecutor's office acted in accordance with the legislation in force. Accordingly, Article 5 para. 1 (c) (art. 5-1-c) has not been infringed in that respect.

B. Release following the judgment

23. Mrs Manzoni maintained that she had been unlawfully detained for seven hours between the end of the trial in the Rome District Court (11.45 a.m.) and her release from prison (6.45 p.m.).

24. The Government, pointing out that the applicant had no longer been regarded as being in detention after 11.45 a.m., argued that the period of time in issue had been quite normal seeing that she had been taken to the prison (roughly an hour's drive from the court) at about 1.30 p.m. and that the staff there had served the record of the hearing on her (at 3.10 p.m.), informed the police that she was about to be released and waited for confirmation that there were no objections, returned her personal effects to her, dealt with accounts and at 6.30 p.m. had taken a note of her address for notification purposes. All those measures had necessarily taken some time.

The Commission agreed.

25. The Court reiterates that the list of exceptions to the right to liberty secured in Article 5 para. 1 (art. 5-1) is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision (art. 5-1), namely to ensure that no one is arbitrarily deprived of his or her liberty (see, *inter alia*, the following judgments: *Van der Leer v. the Netherlands*, 21 February 1990, Series A no. 170-A, p. 12, para. 22; *Wassink v. the Netherlands*, 27 September 1990, Series A no. 185-A, p. 11,

para. 24; and *Quinn v. France*, 22 March 1995, Series A no. 311, p. 17, para. 42).

As the Court does not have any details concerning the circumstances of the applicant's imprisonment on 27 September 1991, it merely notes that Mrs Manzoni was taken to Rebibbia Prison more than an hour and a half after the end of her trial and that the record of the hearing was served on her shortly after her arrival there; that procedure must be regarded as a first step towards complying with the Rome District Court's judgment. Admittedly, the administrative formalities mentioned by the Government could have been carried out more swiftly, but that is not a ground for finding that there has been a breach of the Convention; some delay in carrying out a decision to release a detainee is often inevitable, although it must be kept to a minimum.

In conclusion, there has been no violation of Article 5 para. 1 (c) (art. 5-1-c) in this respect either.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been no violation of Article 5 para. 1 (c) of the Convention (art. 5-1-c) as regards the applicant's imprisonment following her arrest;
2. Holds that there has been no violation of Article 5 para. 1 (c) (art. 5-1-c) as regards the applicant's release following the Rome District Court's judgment.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 1 July 1997.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar