



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

CASE OF VACCARO v. ITALY

(Application no. 41852/98)

JUDGMENT

STRASBOURG

16 November 2000

FINAL

16/02/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form.

In the case of Vaccaro v. Italie,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

MM. C.L. ROZAKIS, *President*,

A.B. BAKA,

B. CONFORTI,

P. LORENZEN,

M. FISCHBACH,

M^{me} M. TSATSA-NIKOLOVSKA,

M. E. LEVITS, *Judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 14 October 1999 and 26 October 2000,

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

PROCEDURE

1. The case originated in an application (no. 41852/98) against Italy lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mr Antonino Vaccaro (“the applicant”), on 24 March 1998.

2. The applicant was represented by Mr D. Ammannato, a lawyer practising in Florence. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and their Co-agent, Mr V. Esposito.

3. The applicant alleged that his detention on remand lasted for an unreasonably long period of time.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 14 October 1999 the Court declared the application admissible.

7. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's detention on remand and his committal for trial

8. The applicant was detained on 30 September 1993 further to an order issued on 24 September 1993 by the preliminary investigations judge ("*giudice per le indagini preliminari*") attached to the Florence District Court. The applicant was accused of belonging to a Mafia type association, drug-trafficking, unlawful possession of arms and forgery. The accusation was based on the statements of a certain Mr M., a *pentito* (a *mafioso* who had decided to co-operate with the authorities).

9. In the reasons for the order of 24 September 1993, the preliminary investigations judge found that M.'s statements should be considered credible and to have been made voluntarily. They could therefore constitute strong evidence of guilt ("*gravi indizi di colpevolezza*"), which is a prerequisite under Italian law for remanding an accused in custody. The judge also considered that these statements were corroborated by the results of criminal investigations concerning similar crimes, as well as by statements made by other *pentiti*. Furthermore, pursuant to section 275 of the Code of Criminal Procedure ("*Codice di Procedura Penale*", hereinafter called the "CPP"), the nature and the seriousness of the offences raised the rebuttable presumption that the conditions for remand in custody laid down in section 274 (risk of tampering with evidence, of absconding and of re-offending) applied.

10. On 24 March 1995, the preliminary investigations judge committed the applicant and twenty-six other persons for trial before the Florence District Court.

11. In a judgment of 8 February 1996, the Florence District Court, acting in accordance with section 23 of the CPP (which provided that the judge who found himself incompetent *ratione loci* should forward the case-file to the competent judge), declared that the case was outside its territorial jurisdiction and ordered that the case-file be transmitted to the Grosseto District Court.

12. In an order of 25 March 1996, the Grosseto District Court confirmed the applicant's detention on remand.

13. In an order of 28 March 1996, the President of the Grosseto District Court committed the accused for trial and scheduled the date of the first hearing for 7 May 1996.

14. In an order of 25 July 1996, the Grosseto District Court granted the prosecution's request to suspend the maximum periods of detention on

remand for the duration of the trial and deliberations at first instance, pursuant to section 304(2) CPP. It considered that, given the fact that more than three hundred witnesses had to be examined and a considerable volume of documents, including a number of experts' opinions, had to be produced, the proceedings could be regarded as being particularly complex. In the reasons for that order, the District Court specified that, according to the Court of Cassation's well-established case-law, the suspension should cover the whole duration of the trial and not only the days of the actual hearings.

15. On 21 November 1996, the applicant lodged an application for immediate release with the District Court. He observed that the interpretation followed in the order of 25 July 1996 - according to which the suspension of the maximum periods of detention on remand should cover periods of inactivity between hearings - was inconsistent with the relevant provisions of the CPP, with the overall purpose of Article 5 § 3 of the Convention and with Articles 3, 13 § 5 and 24 of the Italian Constitution.

16. In an order of 3 December 1996, the Grosseto District Court, observing that the maximum periods of detention on remand had not been overstepped, dismissed the applicant's claim.

17. On 18 December 1996, the applicant appealed against that order. The Florence District Court, sitting as the authority with jurisdiction to decide on measures affecting the liberty of persons ("*tribunale della libertà e del riesame*"), dismissed the applicant's appeal in an order of 15 January 1997.

18. On 7 February 1997, the applicant appealed on points of law.

19. In a decision of 17 June 1997, the Court of Cassation, considering that the lower court had not duly indicated the specific and concrete grounds for the decision to suspend the maximum periods of detention on remand, annulled the impugned order and referred the case back to the Florence District Court.

20. In a decision of 27 October 1997, filed with the registry on 7 November 1997, the Florence District Court confirmed the Grosseto District Court's order of 3 December 1996 and declared that the doubts raised by the applicant as to the constitutionality of the relevant provisions of the CPP were manifestly ill-founded. The District Court observed that the length of the proceedings was mainly due to the complexity of the case, to the number of parties and witnesses as well as to the circumstances preventing the attendance of the accused's lawyers and of the District Court's judges. Furthermore, no significant periods of inactivity seemed to have occurred during the trial, given the fact that at least fifty hearings had taken place from 25 June until December 1996. However, the court noted that some hearings had been adjourned for reasons which were not imputable to the applicant or to the requirements of the fair administration of justice in criminal cases, such as lawyers' strikes, the Public Prosecutor's illness and a lack of a proper hearing-room. It consequently considered that

a global delay of thirty-one days should be deducted from the maximum period of detention on remand, which had not been overstepped, even taking into account such deduction.

21. On 24 November 1997, the applicant appealed on points of law against that decision. In a decision of 18 February 1998, filed with the registry on 19 March 1998, the Court of Cassation declared the applicant's appeal inadmissible as manifestly ill-founded.

B. The first-instance trial before the Grosseto District Court

22. In the meanwhile, one hundred and thirty-eight trial hearings had taken place before the Grosseto District Court. About three hundreds witnesses had been heard and a number of expert opinions were examined.

23. During the trial, the lawyers of the accused had contested the lawfulness of the order for committal for trial. They had noted that in a judgment of 15 March 1996, the Constitutional Court had declared that section 23 of the CPP was unconstitutional and that the incompetent judge should forward the case-file to the Public Prosecutor's Office (and not to the competent judge, as previously provided). Given the fact that in its judgment of 8 February 1996 the Florence District Court had ordered that the case-file be transmitted to the Grosseto District Court, the lawyers had requested that the whole proceedings be declared null and void.

24. On 22 July 1997, the applicant's lawyer had declared that due to family reasons, he was unable to take part in the hearings scheduled in August and had requested to adjourn the case until 1 September 1997.

25. In a judgment of 16 December 1997, the Grosseto District Court had sentenced the applicant to eleven years and six months' imprisonment for drug-trafficking and had acquitted him in respect of the remainder of the charges. The court had also ordered that the applicant's case-file be transmitted to the Public Prosecutor's Office in order to evaluate the desirability of instituting fresh proceedings against him for belonging to a Mafia type association and drug-trafficking, crimes which appeared to have been committed in Florence.

26. As concerned the question of the lawfulness of the order for committal for trial, the District Court had observed that the decision of the Florence District Court had been adopted on 8 February 1996, while the invoked judgment of the Constitutional Court had been published only on 20 March 1996. Therefore, in accordance with the principle *tempus regit actum*, the finding of the unconstitutionality of section 23 of the CPP could not retroactively affect the lawfulness of the Florence District Court's judgment.

C. The appeal proceedings

27. The applicant lodged an appeal with the Florence Court of Appeal.

28. In a judgment of 17 November 1998, filed with the registry on 27 November 1998, the Court of Appeal declared that the committal for trial and the first-instance judgment were null and void and ordered that the case-file be transmitted to the Florence Public Prosecutor's Office. It observed, in particular, that the finding that a provision was unconstitutional should in principle apply to all pending proceedings. Therefore, after the Constitutional Court's judgment of 15 March 1996, the District Court had no power to commit the accused for trial and its President's order of 28 March 1996 as well as all the acts done before it were invalid.

29. On 3 May 1999, the applicant was released.

THE LAW

1. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

30. The applicant complained about the length of his detention on remand. He invoked Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial...”

A. Period to be taken into consideration

31. The applicant was arrested on 30 September 1993 and was deprived of his liberty until 16 December 1997, when the Grosseto District Court sentenced him to eleven years and six months' imprisonment. This first period of detention on remand lasted four years, two months and sixteen days. From 16 December 1997 until 17 November 1998, the applicant's deprivation of liberty was based on Article 5 § 1 a) of the Convention as “the lawful detention of a person after conviction by a competent court” and cannot therefore be taken into account for the purposes of Article 5 § 3 of the Convention, a provision which only concerns the length of detention within the meaning of Article 5 § 1 c) (see, for instance, the *B. v. Austria* judgment of 28 March 1990, Series A no. 175, p. 14, § 36).

32. However, on 17 November 1998 the Florence Court of Appeal quashed the first-instance judgment and ordered the renewal of the trial. From that date, the applicant was again deprived of his liberty according to Article 5 § 1 c) of the Convention. This second period of detention on remand lasted until 3 May 1999, which is five months and sixteen days.

33. Therefore, the overall duration of applicant's detention on remand is four years, eight months and two days.

B. Reasonableness of the length of detention

1. Arguments of those appearing before the Court

34. The Government observed that the decisions ordering the suspension of the maximum periods of detention on remand were justified by the complexity of the case and the number of the accused persons. They pointed out that one hundred and thirty-eight hearings took place before the Grosseto District Court, that there were no long periods of stand-still during the trial and that the competent authorities showed a particular diligence in dealing with the matter. Moreover, on 22 July 1997 the applicant's lawyer himself requested an adjournment - thus showing little interest in a prompt termination of the proceedings - and all the lawyers of the accused agreed on the adjournments of the dates of the hearings. The Government furthermore noted that there was strong evidence of guilt against the applicant, who was charged with very serious offences and could be considered as a socially dangerous person.

35. The applicant considered that the interpretation followed by the national courts - according to which the suspension of the maximum periods of detention on remand should cover periods of inactivity between hearings - is inconsistent with the relevant provisions of the CPP and violates Article 5 § 3 of the Convention. He observed that at first instance he was acquitted from the charges of belonging to a Mafia type association and unlawful detention of arms and pointed out that the whole trial has been declared null and void by the Florence Court of Appeal.

2. The Court's assessment

a) Principles established by the Court's case-law

36. According to the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence,

overweighs the rule of respect for individual liberty (see, among other authorities, the *W. v. Switzerland* judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30).

It falls in the first place to the national judicial authorities to examine all the circumstances arguing for or against the existence of such a requirement and to set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the undisputed facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see the *Contrada v. Italy* judgment of 24 August 1998, *Reports of judgments and decisions* 1998-V, p. 2185, § 54).

The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices: the Court must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty. Where such grounds are “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see the *Muller v. France* judgment of 17 March 1997, *Reports* 1997-II, p. 388, § 35 and the *I.A. v. France* judgment of 23 September 1998, *Reports* 1998-VII, p. 2979, § 102).

b) Application to the present case

37. The national authorities held that the applicant could have tried to tamper with evidence, to abscond and to re-offend. However, particularly strong reasons should be put forward to justify a detention on remand which lasted more than four years and eight months (see the *P. B. v. France* judgment of 1 August 2000, unpublished, § 30).

i. The risk of tampering with evidence, of absconding and of re-offending

38. The Court observes that in reaching this conclusion, the national authorities relied on the presumption created by Article 275 of the CPP (see paragraph 9 above). According to this provision, it is presumed that there is a risk that a suspect will abscond, commit further offences or tamper with evidence in cases concerning serious offences such as those with which the applicant was charged. Even assuming that such an approach, which takes little account of the special features of each case, is in conformity with the Convention, it is to be pointed out that the risk of tampering with evidence significantly diminished at the end of the preliminary investigations and after the delivery of the first-instance judgment. The needs to prevent the applicant absconding or committing further offences are without doubts relevant factors, but they cannot justify the overall length of the detention on remand.

39. In sum, although some of the grounds on which the applicant's deprivation of liberty was based could be seen as relevant and sufficient, they lost their strength after a certain lapse of time. It is therefore necessary to consider the conduct of the proceedings.

ii. Conduct of the proceedings

40. The Court notes that the applicant's case was a complex one, having regard, in particular, to the seriousness of the charges and the number of persons involved. It recalls that trials of presumed members of the Mafia are particularly sensitive and complicated. With its rigid hierarchical structure and very strict rules and its substantial power of intimidation based on the rule of silence and the difficulty in identifying its followers, the Mafia represents a sort of criminal opposition force capable of influencing public life directly or indirectly and of infiltrating the institutions. It is for that reason – to enable the “organisation” to be undermined through information supplied by former “members” – that detailed inquiries are necessary (see the *Contrada v. Italy* judgment, quoted above, p. 2190, § 67).

41. The trial before the Grosseto District Court lasted one year, seven months and nine days (from 7 May 1996 until 16 December 1997). However, on 22 July 1997 the applicant's lawyer asked for the adjournment of the case until 1 September 1997, thus provoking a delay of one month and nine days which cannot be attributed to the judicial authorities (see paragraph 24 above). During the trial, one hundred and thirty-eight hearings took place, about three hundred witnesses were heard and a considerable number of documents, including a number of experts' opinions, were examined (see paragraphs 14 and 22 above). Moreover, the national courts were called upon to decide on the applicant's claims challenging the lawfulness and the constitutionality of the suspension of the maximum periods of detention on remand at least on four occasions.

42. Before the Strasbourg institutions, the applicant strongly maintained that under Italian law the suspension of the said maximum periods should cover only the days of the actual hearings and not the whole duration of the trial. However, it is not the task of the Court to take the place of the domestic courts, which are called upon to resolve problems of interpretation of domestic legislation (see, among many other authorities, the *Brualla Gómez de la Torre v. Spain* judgment of 19 December 1997, *Reports* 1997-VIII, p. 2955, § 31, and the *Edificaciones March Gallego S.A. v. Spain* judgment of 19 February 1998, *Reports* 1998-I, p. 290, § 33). The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention. In the present case, having regard to the complexity of the case, to the activities carried on by the national authorities and to the fact that there were no significant periods of stand-still during the trial, the Court considers that the proceedings before the Grosseto District Court were conducted with the diligence required.

43. On the other hand, it is to be noted that the investigations lasted one year, five months and twenty-four days (from 30 September 1993 until 24 March 1995), and that the Florence District Court took ten months and fifteen days (from 24 March 1995 until 8 February 1996) to declare that the case was outside its territorial jurisdiction. As no explanation for these delays was given by the Government, the Court considers that during the preliminary investigations and the trial before the Florence District Court, the judicial authorities failed to act with all due expedition.

c) Conclusion

44. To have been compatible with the Convention, the considerable duration of the applicant's deprivation of liberty should have been based on particularly convincing reasons. The above considerations show that the initial relevance of the grounds cited by the national authorities was reduced over time. Having regard also to the unexplained delays which occurred in the course of the proceedings, the Court considers that the period spent by the applicant in detention pending trial exceeded the "reasonable time" laid down in Article 5 § 3.

45. Therefore, there has been a violation of Article 5 § 3 of the Convention.

2. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. Article 41 of the Convention provides:

"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. Damages

47. The applicant claimed compensation of 100 688 000 Italian lire for non-pecuniary and pecuniary damage. He alleged that because of his detention pending trial, he lost his firm of second-hand cars sale.

48. In the Government's submission, the applicant had not provided any evidence of pecuniary damage and a finding of a violation would provide sufficient compensation for any non-pecuniary damage.

49. The Court dismisses the claim relating to material damage as it is not based on proof that the alleged loss had actually been sustained. On the other hand, the Court considers that the applicant undoubtedly sustained non-pecuniary damage on account of his prolonged deprivation of liberty. That being so, it awards him 10 000 000 Italian lire under that head.

B. Costs and expenses

50. The applicant claimed payment of the costs and expenses he had incurred before the Italian courts (30 000 000 lire) and the Convention organs (22 032 000 lire).

51. The Government left the matter to the Court's discretion.

52. On the basis of the information in its possession and its case-law, the Court awards the applicant 5 000 000 Italian lire for costs and expenses.

C. Default interest

53. 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* that there has been a violation of Article 5 § 3 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 10 000 000 (ten million) Italian lire in respect of non-pecuniary damage, and 5 000 000 (five million) Italian lire for costs and expenses;
 - (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;
3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 16 November 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President