



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

CASE OF N.C. v. ITALY

(Application no. 24952/94)

JUDGMENT

STRASBOURG

18 December 2002

In the case of N.C. v. Italy,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mr J.-P. COSTA,
Mr G. RESS,
Mr GAUKUR JÖRUNDSSON,
Mrs E. PALM,
Mr L. CAFLISCH,
Mr P. KÜRIS,
Mr I. CABRAL BARRETO,
Mr C. BÎRSAN,
Mr J. CASADEVALL,
Mr B. ZUPANČIČ,
Mr M. PELLONPÄÄ,
Mrs H.-S. GREVE,
Mr A.B. BAKA,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,

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

Having deliberated in private on 11 September and 11 December 2002,

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

PROCEDURE

1. The case originated in an application (no. 24952/94) against the Italian Republic 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 N.C. (“the applicant”), on 28 April 1994.

2. The applicant was represented by Mr M. Manfreda, a lawyer practising in San Pietro Vernotico (Brindisi). The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their Co-Agent, Mr V. Esposito. The President of the Grand Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant complained under Article 5 § 5 of the Convention that he had not been entitled under Italian law to claim compensation in respect of his detention pending trial, which he maintained had not complied with Article 5 §§ 1 (c) and 3.

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). On 15 December 1998 it was declared admissible by a Chamber of that Section, composed of the following judges: Mr A.B. Baka, President, Mr B. Conforti, Mr G. Bonello, Mrs V. Strážnická, Mr P. Lorenzen, Mr M. Fischbach, Mrs M. Tsatsa-Nikolovska, and also of Mr E. Fribergh, Section Registrar.

6. In a judgment of 11 January 2001 (“the Chamber judgment”) the Chamber expressed the opinion, by four votes to three, that there had been no violation of Article 5 § 5 of the Convention. The joint dissenting opinion of Judges Bonello, Strážnická and Tsatsa-Nikolovska was annexed to the judgment.

7. On 4 April 2001 the applicant requested that the case be referred to the Grand Chamber (Article 43 of the Convention).

8. On 5 September 2001 a panel of the Grand Chamber decided to accept his request (Rule 73).

9. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

10. The Government, but not the applicant, filed a memorial. The Grand Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. The applicant was born in 1951 and lives in Velenzano (Bari). He was formerly the technical director, technical and economic adviser and special representative and agent of a company, X.

A. Detention of the applicant pending trial

12. On an unspecified date a preliminary investigation was opened in respect of the applicant on the suspicion of abuse of official authority and corruption, offences which he had allegedly committed in the performance of his duties in 1991.

13. On 16 October 1993 the public prosecutor attached to the Brindisi District Court applied for the applicant to be placed either in pre-trial detention or under house arrest, or prevented from discharging his duties as

a director of the X company, on the ground that five witness statements and an opinion prepared by an expert, Z, in the course of the preliminary investigation provided substantial evidence of his guilt. The content of the statements and of the expert opinion had been corroborated by other documents. The applicant appeared to have commissioned Y, the head of Brindisi District Council's town-planning department, as chief engineer for the construction of a road ("Strada dei Pittachi") and as assistant project manager for the construction of a new detention centre in Lecce. The appointments were alleged to have been a "payment" from the X company to Y for having issued false declarations in the approval procedure relating to the plans submitted by the X company for the road project.

The public prosecutor further explained that, as the applicant had kept his post in the X company, there was a danger that he might commit other similar offences.

14. On 2 November 1993 the Brindisi investigating judge (*giudice per le indagini preliminari*) issued a warrant for the applicant's arrest on the ground that there was substantial evidence of his guilt (*gravi indizi di colpevolezza*), as referred to in the public prosecutor's application of 16 October.

15. Regarding the grounds for imposing this precautionary measure, the judge noted that the applicant had kept his post as technical director of the X company, as the public prosecutor had mentioned in his application. The judge considered, *inter alia*, that in order to decide which precautionary measure was most suitable in the applicant's case, he had to take into account the nature of the conduct under examination. The worst aspects of the applicant's conduct were that he had failed to observe the rules of administrative procedure, had wasted public funds and had infringed the provisions governing public tendering. The result had been a project that showed no respect for the environment – a very serious failing, as the judge explained:

"... the chaotic and unliveable character of southern Italian cities is not caused solely by the spread of petty crime but stems primarily from the pattern of urban growth (the absence of any effective regulation, resulting in a lack of adequate public areas for parking, gardens and relief roads; this unease is tangibly felt in all parts of Brindisi). Abuses relating to the management and spending of public funds, such as those committed in the Strada dei Pittachi project, must be regarded as being just as serious as possession of a firearm with its serial number removed or the conduct of a drug addict who robs a tobacconist of several thousand lire at gunpoint or with the help of accomplices, as often happens in Brindisi. In view of the legislature's intention to counter the risk to society in such cases by the most stringent precautionary measure – detention – that measure is all the more justified in the far more serious case under investigation and must be considered appropriate and necessary, even if it is not expressly required by Article 275 § 3 of the Code of Criminal Procedure [the CCP] in circumstances of this kind. Otherwise, the difference in treatment would be unjustifiable, and therefore unjust."

The judge concluded that in cases such as the present one, “where each act, firstly, is intended to serve reprehensible private interests and, secondly, is committed by persons who enjoy or should enjoy an excellent reputation because of the powers and/or responsibilities which they exercise, recourse must be had to the measure of detention (and not that of house arrest, which is very convenient – especially for someone like the suspect who is used to living indoors – and not sufficiently deterrent).”

16. The applicant was arrested on 3 November 1993.

B. The applicant's appeals against the measures depriving him of his liberty

17. On 3 November 1993 the applicant applied to the Brindisi District Court to be released or, failing that, placed under house arrest, arguing that there was not “substantial evidence of [his] guilt” within the meaning of Article 273 of the CCP and that there were no grounds whatsoever for imposing precautionary measures.

18. On 9 November 1993 the applicant submitted to the registry of the Brindisi District Court further grounds in support of his application. He reiterated that there was neither any evidence against him, nor were there any grounds for precautionary measures: there was no need to prevent interference with the course of justice, as the investigation had almost been completed; no danger of his absconding, since he had never shown any intention of doing so but had instead been very cooperative at the time of his arrest; and, in particular, no need to prevent the commission of a criminal offence. In that connection, the applicant pointed out that Article 274 (c) of the CCP required there to be a genuine danger of reoffending, based on the particular circumstances of the case and on the suspect's character, whereas the reasons given by the investigating judge had been extremely vague and hypothetical. Furthermore, the applicant had no criminal record.

19. Lastly, the applicant drew the court's attention, in particular, to the settled Italian case-law to the effect that, where a precautionary measure was being considered a long time after the offence had been committed, the suspect's conduct in the intervening period had to be taken into account. In his case, he had not been accused of or charged with any similar or different offence in the two years following the acts of which he was suspected.

20. Following a hearing on 11 November 1993, the court held in a decision of 13 November 1993 that there was undoubtedly “substantial evidence” of the applicant's guilt. It further held: “There is undeniably a danger that the suspect might commit further offences within the meaning of Article 274 (c) of the CCP, seeing how he succeeded in unlawfully attaining the economic ends in question.” It therefore refused the applicant's

application for release. However, since he had no criminal record, the court allowed his alternative request and placed him under house arrest.

21. On 23 November 1993 the applicant appealed on points of law against the refusal to release him, arguing that his detention pending trial was in breach of Articles 273 and 274 (c) of the CCP. He submitted, in particular, that the Brindisi District Court had not given any reasons for its decision to apply precautionary measures for the purposes of Article 274 (c) of the CCP.

22. On 30 November 1993 the applicant applied to the Brindisi investigating judge to have the order placing him under house arrest revoked, as he had resigned from his post as technical director of the X company.

23. The judge refused that application on 3 December 1993. His decision was based, *inter alia*, on the fact that that measure had been taken only a short time ago and had, moreover, replaced a more stringent one, and on the serious nature of the accusation. He explained that the applicant might still be able to use his experience and professional skills either for his own ends or on behalf of another company.

24. On 6 December 1993 the applicant appealed to the Brindisi District Court against that decision. He submitted that the previous decisions had been taken with a view to preventing the commission of criminal offences and, in particular, because he had kept his post in the X company. Now that he had resigned, such preventive action was no longer necessary.

25. In a decision of 20 December 1993 the court noted that all the previous decisions concerning the applicant's deprivation of liberty had been based on Article 274 (c) of the CCP. It held that, in view of the applicant's resignation, the time that had elapsed since the measure had been imposed and the suspect's character, there were no longer any grounds for keeping him under house arrest. Accordingly, it ordered his immediate release.

26. On 28 February 1994 the applicant withdrew his appeal on points of law of 23 November 1993, a fact that was acknowledged on 8 March 1994.

C. The applicant's acquittal

27. In a judgment of 15 April 1999 the Brindisi District Court acquitted the applicant on the ground that the alleged facts had never occurred (*perché il fatto non sussiste*). That judgment became final on 14 October 1999.

28. The court observed, in particular, that the public prosecutor's submissions had been based mainly on an expert opinion prepared by Z in the course of the preliminary investigation. Z had been examined at the trial, but the conclusions he had reached had been successfully challenged by the defence. In particular, an expert appointed by the defence, W, had put together a different version of events, which had been submitted to the court at hearings on 6 November 1996 and 5 February 1997. His version was

corroborated by certain documents and witness statements. In particular, it appeared that the expert witness Z had failed to distinguish properly between two separate administrative procedures and had not taken into account a number of factors that might have explained why the X company had been chosen to carry out certain portions of the Strada dei Pittachi project. In the light of that, and even supposing that the internal administrative regulations had been contravened, it had not been established that the X company had made unjustified profits. Furthermore, at a hearing on 11 November 1997, a witness had clarified the relations between the X company and the applicant. In particular, the latter had suspended his contract of employment with the company when he had become a university lecturer; his role had subsequently been limited to that of an outside consultant. In that capacity, the applicant could not have been in charge of the operational management of a particular project, since that had been the responsibility of the manager of a subsidiary company, who had also been responsible for payments. Lastly, statements made at the hearings by other witnesses had shown that Y's appointment as chief engineer for the Strada dei Pittachi road-construction project and as assistant project manager for the construction of the new detention centre in Lecce had been based on technical considerations and grounds of suitability, and had been consistent with previous practice.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Conditions for the application of a precautionary measure depriving a person of his liberty

29. The conditions for the application of a precautionary measure (*misura cautelare*) in criminal proceedings are set out in Articles 272 et seq. of the CCP.

1. "Substantial evidence of guilt"

30. By Article 273 § 1 of the CCP, "no one shall be subjected to a precautionary measure unless there is substantial evidence of his guilt [*gravi indizi di colpevolezza*]". The evidence must concern an offence punishable by life imprisonment or by a prison sentence of more than three years.

31. The Court of Cassation has held that "substantial evidence of guilt" means any evidence against the suspect which, without being capable of proving beyond reasonable doubt that he was responsible, nonetheless suggests that it will possible at a later stage to establish his responsibility, thereby creating a heightened probability of his guilt at the investigation stage (see the plenary Court of Cassation's judgment of 21 April 1995

(*Costantino*), published in *Giust. pen.* 1996, III, 321, and the Court of Cassation's judgment of 10 March 1999 (*Capriati*), published in *CED Cass.*, no. 212998; see also the Court of Cassation's judgment of 23 February 1998 (*Derzsiova*), published in *Riv. pen.* 1998, 816, which refers to a "strong probability that the suspect will be held responsible for the offence", and the Court of Cassation's judgment of 7 February 1992 (*Caparrotta*), published in *Arch. n. proc. pen.* 1992, 597, according to which the evidence must create a strong indication of guilt (*consistente fumus di colpevolezza*), which is not rebutted by the existence of a possible alternative explanation that will have to be verified in the course of the trial).

2. Conditions for a precautionary measure: the danger of reoffending

32. Article 274 of the CCP lists the circumstances warranting the adoption of a precautionary measure. The existence of at least one of these circumstances, in addition to the "substantial evidence of guilt" referred to in Article 273 § 1 of the CCP, is a prerequisite for the adoption of a measure depriving a person of his liberty.

33. Article 274 provides, in particular, that precautionary measures may be ordered to prevent interference with the course of justice (Article 274 (a)), if there is a danger of absconding (Article 274 (b)) and to prevent the commission of criminal offences (Article 274 (c)).

34. Article 274 (c), which was applied in the applicant's case, provides that precautionary measures are to be ordered

"where, given the specific nature and circumstances of the offence and having regard to the character of the suspect or the accused as shown by his conduct, acts or criminal record, there is a genuine danger that he will commit a serious offence involving the use of weapons or other violent means against the person or an offence against the constitutional order or an offence relating to organised crime or a further offence of the same kind as that of which he is suspected or accused".

35. The Court of Cassation has held that the requirements concerning the protection of the community must be considered in relation to a genuine danger that offences will be committed; since this requires a forecast amounting to a presumption, the judge must give a concrete and precise explanation of the criteria adopted, and, if several persons are suspected, may not merely base his decision on considerations of a general nature (see the Court of Cassation's judgment of 8 November 1993 (*Stanislao*), published in *CED Cass.*, no. 197719). The judge may not take into account the seriousness of the offence *in abstracto*, but must address the specific circumstances in issue in the case before him that highlight the danger posed by the suspect; in giving reasons for his decision, he must refer to specific facts and not to general and/or automatic criteria (see the Court of Cassation's judgment of 29 March 2000 (*Penna*), published in *CED Cass.*, no. 216304).

36. On the other hand, the fact that a person has no criminal record does not necessarily mean that he or she does not pose a danger to society, seeing that that condition may be satisfied, as Article 274 (c) of the CCP expressly provides, on the basis of the suspect's conduct or acts (see the Court of Cassation's judgment of 2 October 1998 (*Mocci*), published in *Cass. pen.* 1999, 2584).

37. Lastly, the Court of Cassation has held that the danger of reoffending is not ruled out by the fact that the suspect has resigned or has in any other way ceased to perform the duties in the context of which he is alleged to have abused his authority; the law merely requires there to be a likelihood of committing an offence of the same kind as that in respect of which an investigation has been opened, and does not require the commission of the same offence (see the Court of Cassation's judgments of 10 September 1992 (*Gazner*), published in *Cass. pen.* 1993, no. 1042, and of 17 March 1994 (*Abbate*), published in *Cass. pen.* 1995, 340).

3. *Grounds for decisions ordering precautionary measures*

38. Article 292 of the CCP provides that decisions ordering a precautionary measure must contain reasons and must, in particular, indicate the grounds on which the measure has been imposed and the evidence of the suspect's guilt, including the facts on which that evidence is based and the reasons why it is relevant. Such decisions must also take into account the time that has elapsed since the offence was committed.

39. The Court of Cassation has held that statements of reasons cannot be worded using standard formulae; instead, they must set out the particular grounds taken into consideration by the judge in the case before him (see, in particular, the Court of Cassation's judgment of 5 July 1990 (*Ranucci*), published in *Arch. n. proc. pen.* 1991, 124, quashing a decision in which the requirement of danger had been based solely on the seriousness of the alleged offence and on the suspect's character as shown by his criminal record).

B. Right to compensation for “unjust” pre-trial detention (*ingiusta detenzione*)

40. Article 314 of the CCP provides for the right to compensation for so-called “unjust” pre-trial detention in two distinct cases: where an accused is acquitted following proceedings on the merits of a criminal charge, or where it is established that a suspect was placed or kept in pre-trial detention in breach of Articles 273 and 280 of the CCP. The latter provision states that a precautionary measure may be taken only if the maximum penalty for the alleged offence is more than three years' imprisonment. However, no compensation may be awarded if the detention was ordered or prolonged in breach of Article 274 of the CCP (for example, if there was no danger of

reoffending; see, amongst other authorities, the plenary Court of Cassation's judgment of 12 October 1993 (*Durante*)). Article 314 provides:

“Anyone who has been acquitted in a judgment that has become final – on the grounds that the alleged facts never occurred, he did not commit the offence, no criminal offence has been committed or the facts alleged do not amount to an offence in law – shall be entitled to compensation for any period he has spent in detention pending trial, provided that the detention was not wholly or partly the result of a deliberate act or gross negligence on his part.

The same right shall be secured to anyone who, having been detained pending trial, has been acquitted on any grounds whatsoever or convicted, where the detention is found, in a final decision, to have been ordered or prolonged in breach of the applicability criteria set out in Articles 273 and 280.”

41. Article 315 of the CCP provides that claims for compensation must be made within two years after the acquittal or conviction becomes final, failing which they will be inadmissible. Following the entry into force of Law no. 479 of 1999, the maximum award is 516,456.90 euros.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

42. In their memorial of 8 January 2002 the Government raised for the first time the objection that domestic remedies had not been exhausted, on the ground that the applicant had not availed himself of the remedy provided by Articles 314 and 315 of the CCP. They noted, in particular, that by Article 314 anyone who, as in the applicant's case, was acquitted because the alleged facts had never occurred was entitled to compensation for any time spent in pre-trial detention.

43. The Court observes that the Government's objection is based on the applicant's failure to lodge a claim for compensation with the competent domestic courts following his acquittal, which became final on 14 October 1999 (see paragraph 27 above). However, it was only on 8 January 2002 that the Government brought the matter to the attention of the Court.

44. The Court would point out that according to Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application. However, in the present case the decision on the admissibility of the application was adopted on 15 December 1998 (see paragraph 5 above) and at that time the fact on which the Government's objection is based had not yet occurred. Therefore, the circumstances did not allow the Government to comply with the deadline set forth in Rule 55.

45. On the other hand, the Court considers that where a new legally relevant procedural event subsequently occurs which may influence the admissibility of the application, it would be contrary to the interests of the proper administration of justice to allow a respondent Contracting Party to wait for an excessive period before making a formal objection. This situation has similarities with the late discovery of a fact which might have a decisive influence. It is significant that in such circumstances Rule 80 requires a request for revision to be submitted to the Court within a period of six months after the party acquired knowledge of the relevant fact.

46. In the present case, more than two years and two months elapsed from the moment at which the Government could have become aware of the applicant's final acquittal before the objection of non-exhaustion was raised for the first time. In particular, the Government failed to make any reference during the proceedings on the merits before the Chamber to the use that the applicant could have made of the remedy provided by Articles 314 and 315 of the CCP; it was only after the applicant's request for referral of the case to the Grand Chamber had been accepted that the matter was raised. The Court considers that such a delay is unreasonably long and notes that no explanation on this point was provided by the Government.

47. Consequently, the Government are estopped from raising a preliminary objection of non-exhaustion of domestic remedies at the present stage of the proceedings. The Government's preliminary objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

48. The applicant complained that he had not been entitled to compensation although his detention pending trial had infringed Article 5 §§ 1 (c) and 3. He alleged a violation of Article 5 § 5 of the Convention on that account. The relevant parts of Article 5 provide:

“1. 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 or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. 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. Release may be conditioned by guarantees to appear for trial.

...

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

49. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see *Wassink v. the Netherlands*, judgment of 27 September 1990, Series A no. 185-A, p. 14, § 38). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions.

50. The Court notes that in the instant case the Italian authorities did not hold that the applicant's pre-trial detention or house arrest had been unlawful or otherwise in contravention of the first four paragraphs of Article 5. The applicant submitted to the Court numerous legal and factual arguments to show that paragraphs 1 (c) and 3 of that provision had been infringed in his case. In particular, he argued that, in breach of Articles 273 and 274 of the CCP, there had been no substantial evidence of his guilt and no genuine danger of his reoffending. It followed, in his submission, that the measure depriving him of his liberty had not been justified for the purposes of Article 5 § 1 (c) and had not been ordered “in accordance with a procedure prescribed by law”. Lastly, he submitted that the precautionary measure had been applied for an unreasonable time.

51. However, the Court does not consider it necessary to examine whether there was a breach of Article 5 §§ 1 (c) and 3 in the instant case, because, even supposing that the requirements of those provisions have not been satisfied, there is no appearance of a violation of Article 5 § 5 in the applicant's case.

52. In this connection, the Court reiterates that the effective enjoyment of the right to compensation guaranteed by Article 5 § 5 must be ensured with a sufficient degree of certainty (see *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2626, § 60, and *Ciulla v. Italy*, judgment of 22 February 1989, Series A no. 148, pp. 18-19, § 44).

53. In the instant case the Court observes that Article 314 of the CCP provides for the possibility of a claim for compensation by anyone who has been acquitted on the grounds that the alleged facts never occurred, he did not commit the offence, no criminal offence has been committed or the facts alleged do not amount to an offence in law (see paragraph 40 above). This right to compensation is excluded only if the person concerned was deprived of his liberty as a result of a deliberate act or gross negligence on his part, a condition that does not seem to apply in the applicant's case.

54. On 15 April 1999 the applicant was acquitted on the merits by the Brindisi District Court on the ground that the alleged facts had never occurred. That judgment became final on 14 October 1999 (see paragraphs 27 and 28 above). From that moment, the applicant could have made a claim under Article 314 of the CCP. It follows that the Italian legal system afforded the applicant, with a sufficient degree of certainty, the right to compensation in respect of his detention pending trial.

55. It is true that that right arose when the applicant's acquittal by the Brindisi District Court became final, and if he had been convicted, it appears that the applicant would not have been entitled to any compensation for having been detained when there was allegedly no danger of his reoffending or for the allegedly excessive time during which he had been deprived of his liberty (see paragraph 40 above).

56. However, those circumstances cannot be regarded as decisive. The Court's task is not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they affected the applicant gave rise to a violation of the Convention (see, *mutatis mutandis*, *Padovani v. Italy*, judgment of 26 February 1993, Series A no. 257-B, p. 20, § 24).

57. In the particular circumstances of the present case, the applicant had the possibility of applying for compensation under Article 314 of the CCP for having been deprived of his liberty, without having to prove that his detention had been illegal or excessively long. In awarding compensation the national courts could have based their assessment on the fact that the applicant had ultimately been acquitted by the Brindisi District Court, a circumstance which, under Italian law, would have rendered his pre-trial detention “unjust” (*ingiusta*) independently of any consideration of illegality. The Court considers that in these circumstances the compensation due to the applicant under the Italian CCP as a result of his acquittal is indissociable from any compensation he might have been entitled to under Article 5 § 5 of the Convention as a consequence of his deprivation of liberty being contrary to paragraphs 1 or 3 (see, *mutatis mutandis*, *Pisano v. Italy* [GC] (striking out), no. 36732/97, § 47, 24 October 2002). In this connection, it should be noted that the right to compensation in question is based on the same provision of the CCP (Article 314), which makes no distinction between the amount of compensation payable following an acquittal on the merits and the amount payable for unlawful detention pending trial.

58. It follows that there has been no violation of Article 5 § 5 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been no violation of Article 5 § 5 of the Convention.

Done in English and in French, and notified in writing on 18 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Luzius WILDHABER
President

Paul MAHONEY
Registrar