

Application No 9920/82

Mario Guido NALDI  
against  
Italy

Report of the Commission

(Adopted on 11 May 1985)

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## INTRODUCTION

This report relates to Application No. 9920/82 introduced on 15 April 1982 by Mario Guido NALDI under Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms against Italy. The applicant is represented by Mr M Bezichéri, a lawyer practising in Bologna. At the hearing on 4 October 1984, he was represented by Mrs M R Patrignani, a lawyer practising in Bologna. The Italian Government is represented by its Agent, Mr A Squillante, Head of the Diplomatic Litigation Department at the Ministry of Foreign Affairs. At the hearing on 4 October 1984, it was represented by Mr G Bosco, Minister plenipotentiary, Co-Agent, and by Mr V Librando, President of Division in the Court of Cassation.

On 13 March 1984 the European Commission of Human Rights declared the application admissible (1) and proceeded to carry out the function conferred on it by Article 28 of the Convention, which reads as follows:

"In the event of the Commission accepting a petition referred to it:

- a. it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;
- b. it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in this Convention."

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(1) Available on request from the Commission Secretariat (to be published in D.R.)

On 11 May 1985, the Commission found the parties had reached a friendly settlement of the case and adopted the present report which, in accordance with Article 30 of the Convention, is confined to a brief statement of the facts and of the solution reached.

The following members of the Commission were present when the report was adopted:

MM. C A NØRGAARD, President  
J A FROWEIN  
E BUSUTTIL  
G JÖRUNDSSON  
S TRECHSEL  
B KIERNAN  
J A CARRILLO  
A S GÖZÜBÜYÜK  
J C SOYER  
H G SCHERMERS  
H DANELIUS  
G BATLINER  
H VANDENBERGHE  
Mrs H THUNE  
Sir Basil HALL

PART I

Statement of facts

1. The applicant is an Italian national born in 1958 and resident in Bologna.
2. He was arrested on 16 April 1981, under an arrest warrant signed on 15 April by the Bologna Public Prosecutor, on the charge of being a member of a subversive association.
3. On 24 November 1981, the applicant's lawyer, deeming that there was insufficient evidence against the applicant, asked the investigating judge of the Bologna court to order his release, to order his provisional release from detention on remand or to order his release on the grounds that the maximum period of detention on remand, which was due to end on 6 December 1981, had expired.
4. The applicant's lawyer renewed his requests on 3 and 16 December 1981. On 17 December, considering that the period of detention on remand had expired, he applied for his client's immediate release.
5. On 11 January 1982, the investigating judge in Bologna ordered the applicant's release, instructing him to report once a week to Bologna police headquarters. This judge considered that the maximum period of detention on remand was 8 months in the present case and that it had therefore expired (considerato che il termine massimo di custodia preventiva e limitato ad otto mesi ed è quindi decorso).
6. In his application to the Commission the applicant complained that he was unlawfully detained from 17 December 1981 to 11 January 1982.

He alleged a violation of Article 5 (4) in that a decision on the lawfulness of his detention was not taken speedily. Citing Article 5 (5) he considered that he was entitled to compensation for this period of his detention. He asserted that there was no means of obtaining compensation open to him in Italian law.
7. On 8 December 1982 the Commission decided to bring the application to the attention of the respondent Government and to request the Government to submit its observations on the admissibility and merits of the application.
8. The government's observations on admissibility and merits were dated 1 March 1983. The applicant submitted observations in reply dated 12 April 1983.

9. On 14 July 1983, the Commission resumed examination of the application. After discussion, it decided to invite the Government to submit further observations on the admissibility and merits of the application, particularly with regard to the existence in Italian law of an effective remedy meeting the requirements of Article 5 (5) of the Convention.

10. The government's further observations dated 30 September 1983 were sent to the applicant's lawyer who replied on 11 January 1984.

11. On 13 March 1984, the Commission declared the application admissible. First, it noted that the parties had agreed that the period of detention complained of had not occurred "in accordance with a procedure prescribed by law" as required under Article 5 (1) of the Convention. It considered that the complaint under Article 5 (4) of the Convention raised problems which called for an examination of the merits. Lastly, with regard to the complaint under Article 5 (5) of the Convention, it considered that the applicant had found himself in a situation entitling him to claim compensation for that period of his detention but that the existence of a right to compensation and of the procedure for obtaining compensation was far from being established with sufficient certainty and that accordingly the solution of this complaint also required examination of the merits.

12. On 18 May 1984, the Commission decided to request the parties to submit further observations on the merits of the application at an oral hearing.

13. The hearing at which the Commission heard the further explanations of the parties was held on 4 October 1984.

14. A friendly settlement was subsequently reached, the terms of which are set out in Part II of this report.

## PART II

### SOLUTION REACHED

After declaring the application admissible, the Commission, in accordance with Article 28 (b) of the Convention, placed itself at the disposal of the parties with a view to reaching a friendly settlement of the case on the basis of respect for human rights as defined in the Convention.

In accordance with the usual practice, the Secretary, acting on the instructions of the Commission, made contact with the parties to explore the possibility of reaching a friendly settlement. Following several exchanges of correspondence via the Secretary, a meeting was held in Strasbourg on 27 March 1985 between Mr S Trechsel, the Delegate of the Commission, assisted by Mr M de Salvia, Head of Division, and Mr A Squillante, the Agent of the Government, assisted by Mr D Striani, of the Diplomatic Litigation Department.

The Government subsequently agreed to the following statement:

"The Italian Government will pay the applicant the sum of 5 million Italian Lire as compensation for the detention of the applicant from 17 December 1981 to 11 January 1982, together with a lump sum of one million Italian Lire to compensate for the costs and expenses incurred by him in Strasbourg by reason of the facts causing him to introduce Application No. 9920/82 to the European Commission of Human Rights; that is to say, a total of 6 million Italian Lire.

The Italian Government also refers to Bill No. 694 C submitted to Parliament by the Minister of Justice and sent for examination to the Legislation Committee of The Chamber of Deputies, where it is at present under consideration.

The Bill recognises the right to compensation for all cases of deprivation of liberty (detention on remand or as a security measure) which later prove unjustified. The proposed right to compensation even covers cases where a deprivation of liberty occurs in accordance with the procedural and substantive conditions prescribed by law but where the person concerned has subsequently been discharged. In this respect the Bill goes beyond the requirements of Article 5 of the Convention.

Subject to the rights of Parliament with respect to the passage of legislation, the Government undertakes to do everything in its power to expedite consideration of the Bill and to table such amendments as may be required to ensure that the principle of a right to compensation in all cases of deprivation of liberty contrary to Article 5 (1) to (4) of the Convention shall be established with absolute certainty, as prescribed by Article 5 (5) of the Convention".

On receipt of this statement, Mr Bezicheri, the applicant's lawyer, signified his agreement to the following statement in a letter dated 15 April 1985 and confirmed his agreement by telex on 2 May 1985:

"In view of the undertakings mentioned above, the applicant considers that Application No. 9920/82, lodged with the European Commission of Human Rights, has been settled. He also declares that he will make no further claims before any national or international authority by reason of the facts which led to the introduction of the above-mentioned application."

On 11 May 1985 the Commission found that it appeared from the above statements that an agreement had been reached between the parties. It further found that, having regard to Article 28 (b) of the Convention, a friendly settlement had been reached on the basis of respect for human rights as defined in the Convention, and consequently adopted the present report in accordance with Article 30 of the Convention.

Secretary  
to the Commission

President  
of the Commission

(H C Krüger)

(C A Nørgaard)