

APPLICATION no. 6323/73

Salvatore BOCCHIERI v. ITALY

REPORT OF THE COMMISSION

(adopted on 9 October 1978)

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### THE PARTIES

1. This report, which is drawn up by the Commission in accordance with Rule 54 of its Rules of Procedure, relates to the application brought by Salvatore Bocchieri against Italy and registered under file No. 6323/73 in accordance with Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The applicant was represented before the Commission by Mr. Eugenio Porta, and subsequently by Mr. Giovanni A. Ratti, barristers practising at the Genoa Bar.

The Italian Government was represented by Mr. Giuseppe Manzari, Government Agent, Head of the Diplomatic Disputes Division in the Ministry of Foreign Affairs.

### INTRODUCTION AND SUMMARY OF THE FACTS

2. The applicant was born in Tunis on 12 April 1937 and was resident in Genoa at the time of lodging his application.

His application was lodged on 17 October 1973 by Mr. Eugenio Porta, barrister practising at the Genoa Bar.

3. On 27 April 1972, he was arrested in Savona allegedly in the act (supposta flagranza di reata) of attempted extortion.

On 24 August 1972 the investigating judge of the Savona Court notified him in an arrest warrant (mandato di cattura) of the charges against him, namely of living on immoral earnings and the unauthorised carrying of arms.

On 26 April 1973, the applicant was released. The investigatory proceedings were completed on 4 August 1975 and the trial took place during June 1976.

4. The applications for bail submitted by the applicant were rejected on 27 October 1972 by the investigating judge, and on appeal by the applicant, by the Genoa Court of Appeal (22 November 1972). On the applicant's further appeal, the Court of Cassation in a judgment of 22 February 1973 set aside the decision of the Appeal Court and returned the case to that same court for re-examination. The applicant was released on 26 April 1973. In its judgment of 13 June 1973, the Genoa Court of Appeal declared the applicant's appeal against the decision of 27 October 1972 inadmissible as having become devoid of interest (sopravvenuta carenza di interesse).

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5. According to the applicant, no step in the investigation of his case had been taken by the investigating judge since he was granted bail, or indeed since the "summary" interrogation to which he had been subjected shortly after his arrest in 1972, at least up to the date when his application was lodged. In reply to a question put to him by the Secretariat on the instructions of the Rapporteur, the applicant's counsel stated that there was no available remedy under Italian law for expediting the proceedings.

According to the information communicated by the respondent Government on 13 June 1975, the investigating judge at the Savona Regional Court transmitted the file to the public prosecutor in accordance with Article 369 of the Code of Criminal Procedure. On 24 June 1975, the public prosecutor asked for the applicant to be sent for trial before the Savona Regional Court.

According to the respondent Government, on 4 August 1975 the investigating judge issued an order committing the applicant for trial at the Savona Regional Court, following the public prosecutor's conclusions. The respondent Government added that it was for the registry of the court to fix the date of the hearing as soon as possible.

The respondent Government also explained that it had not been possible to try the applicant, who had been arrested on 27 April 1972 and released on 26 April 1973, in the course of the past three years mainly because of the complexity of the investigation and the backlog of cases before the Savona Regional Court.

In his comments on the information provided by the respondent Government, the applicant pointed out that the Italian Government had not explained the reasons for the delay in the investigation and for the fact that it had not been concluded by the date indicated by the respondent Government.

He stressed that there was no reasonable justification for this delay, since no procedural step was required or indeed, had been taken during the past three years. In fact, the investigation of the case had been completed in the very first few days, despite which the applicant had been deprived of his freedom for a year, i.e. until 26 April 1973.

Counsel for the applicant argued that it emerged from the dates given by the respondent Government that the investigating judge had been prompted to conclude the investigation following the Commission's request for information from the Italian Government.

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6. The applicant relied upon the following provisions:

- Article 5(2), because he had not been informed promptly of the charges against him;
- Article 5(3), because he had been detained without good reason and his detention on remand had lasted longer than was reasonable;
- Article 6(1), because his case had not been heard within a reasonable time;
- Article 6(2), because he had been presumed guilty of the offences with which he was charged (reference is made to the investigating judge's decision of 27 October 1972);
- Article 6(3)(d), because he had not been able to have the witnesses against him examined.

That part of the application which was brought to the notice of the Italian Government on 4 March 1976 in accordance with Rule 42(2)(b) relates only to the complaints under Article 6 (1), (2) and (3)(d).

#### THE PROCEEDINGS

7. The present application was registered on 17 October 1973 under file No. 6323/73.

8. On 14 October 1974, the application was forwarded to a member of the Commission who, acting as Rapporteur, carried out a preliminary examination of the application (Rule 40 of the Commission's Rules of Procedure). On his instructions, the Secretariat was required to ask the applicant:

- whether there was under Italian law any remedy for expediting the proceedings, and
- to clarify his allegations in connection with Article 6(1) (2) and (3)(d).

On 28 December 1974, the applicant answered the questions put to him.

9. On 28 May 1975, the Commission began its examination of the application in the light of the report on admissibility drawn up by the Rapporteur on 26 February 1975 (Rule 42(2)(a) of the Rules of Procedure).

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After deliberating, the Commission decided to ask the respondent Government to state:

- what stage had now been reached in the proceedings in respect of the charges brought against the applicant by the investigating judge at the Savona Regional Court;
- what impediment there was to termination of the investigation, either by a non suit (*sentenza di no doversi procedere*) or by remitting the case to the competent court for trial (*ordinanza di rinvio a giudizio*).

10. On 8 July 1975, the respondent Government sent its replies to the Commission, and these were immediately forwarded to counsel for the applicant, Mr. Eugenio Porta.

On 23 July 1975, counsel for the applicant submitted his comments.

11. On 14 August 1975, the Rapporteur, after noting the replies of the parties, decided to request the respondent Government for further information on the steps taken in the criminal proceedings against the applicant, and the reasons why he had not been tried within the last three years.

On 6 September 1975, the respondent Government sent their reply. This was communicated to the applicant, who replied in a letter of 21 October 1975.

12. In a partial decision of 4 March 1976 (see Appendix I to this report), the Commission:

- 1) decided, in accordance with Rule 42(2)(b) of its Rules of Procedure, to give notice of the application to the respondent Government in so far as the applicant complained that he had not been given a fair hearing within a reasonable time, he had not been able to examine witnesses against him, the presumption of innocence had not been respected and in so far as the facts were subsequent to 31 July 1973 it invited the Government to submit its comments on the admissibility of these complaints in writing;

- 2) declared the remainder of the application inadmissible.

13. On 10 May 1976 the respondent Government submitted its observations on admissibility which were sent to the applicant on 12 May 1976. Despite several letters from the Secretariat and telephone calls to Mr. Porta, counsel for the applicant, nothing was heard.

On 5 October 1976, the Rapporteur examined the case and decided to await the reply from Mr. Porta, who promised in a final telephone call to send his observations in the second half of October.

14. On 15 January 1977, counsel for the applicant informed the Commission that the case had been tried in June 1976 in the course of a hearing lasting only one hour at the end of which the applicant had been convicted, and restated his complaints under Article 6.

On 24 January 1977, the Secretariat requested the applicant's counsel to give details of the applicant's conviction, and particularly to elucidate the present whereabouts of the applicant; was he in custody or at liberty?

In a letter of 27 January 1977, Mr. Porta simply gave the address of the applicant, who appeared to be at liberty.

15. On 21 February 1977, the Italian Government gave notice through its Permanent Representative that it intended to submit further written particulars regarding the admissibility of the application .

16. On 28 February 1977, the Commission decided to accede to the Government's request to submit additional written observations, and expressed the wish that the Government would in particular supply a chronological account of the criminal proceedings against the applicant and information about matters which the Government had mentioned, i.e. the circumstances of the offences with which he was charged, the degree of complexity of the investigation, and the backlog of cases before the Savona Regional Court.

17. On 8 April 1977, the Government sent its additional written observations to the Commission.

Counsel for the applicant did not reply to these observations within the allotted time limit, which expired on 22 April 1977.

18. In a decision rendered on 19 May 1977 (see Appendix II to this report), the Commission declared the application admissible in respect of the complaints based on Article 6(1) of the Convention and inadmissible in respect of the complaints based on Articles 6(2) and 6(3)(d) of the Convention.

In addition, it decided to arrange for a hearing of the parties on the merits of the point retained.

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19. Following several attempts to obtain some kind of response either from Mr. Porta, counsel for the applicant, or from the applicant himself, the latter announced that he had retained another lawyer practising at the Genoa Bar, Mr. Giovanni Ratti. The latter confirmed in a letter of 6 April 1978 that he was prepared to represent the applicant at the hearing of the parties planned for Wednesday 12 July 1978.

20. In a letter of 4 July, Mr. G. Ratti informed the Secretary to the Commission that he could no longer represent the applicant at the hearing on 12 July and that the applicant himself was not able to leave Italy.

21. The Commission resumed its examination of the case on 8 July 1978; it decided to postpone the hearing and instructed its Secretary to contact counsel for the applicant in order to obtain from him an explicit statement as to whether or not the applicant wished to pursue his application before the Commission and, if so, whether it was his firm intention to participate in any further proceedings in the matter.

22. In a letter of 25 July 1978, Mr. Ratti informed the Secretary to the Commission of the applicant's decision not to pursue the application before the Commission.

This letter was communicated on 4 August to the Agent of the respondent Government. Further, in a letter of 13 September 1978 from the Secretary to the Commission, the Government was invited to state its views, in accordance with Rule 49(2) of the Commission's Rules of Procedure, on the possibility of striking the application off the Commission's list. The Government stated in a letter of 6 October 1978 that it had taken note of the withdrawal of the application and was agreeable to its being struck off the list.

23. On 9 October 1978, the Commission took note of a draft report prepared by the Rapporteur (Rule 46(3)(b) of the Rules of Procedure) and decided to strike the present application off its list (Rules 44(1)(a) and 49), adopted the present report (Rule 54) and decided to transmit it to the Committee of Ministers for information and to the parties, and to publish it. The following members were present:

MM. J. E. S. FAWCETT, President  
G. SPERDUTI, First Vice-President  
C. A. NØRGAARD, Second Vice-President  
E. BUSUTTIL  
B. DAVER  
T. OPSAHL  
C. H. F. POLAK  
J. A. FROWEIN  
G. JÖRUNDSSON  
G. TENEKIDES  
S. TRECHSEL  
B. KIERNAN  
N. KLECKER  
M. MELCHIOR



THE DECISION OF THE COMMISSION

24. First of all, the Commission points out that the application was lodged on 17 October 1973.

25. In its decision of 19 May 1977 (Appendix II), the Commission declared the application admissible in respect of the complaint based on Article 6(1) of the Convention.

In addition, it decided, in order to ascertain the facts, to conduct a hearing of the application in the presence of representatives of the parties, in accordance with Article 28 (a) of the Convention. A hearing in the presence of the parties on the merits of the complaint retained was accordingly arranged for 12 July 1978. This hearing was however postponed, by a decision of the Commission of 8 July 1978, in view of a letter from counsel for the applicant, Mr. G. Ratti, to the Secretary to the Commission stating that he would be unable to represent the applicant at the said hearing and that the applicant was unable to leave Italy.

26. The Commission is now called upon to resume its examination of the application in the light of the new situation with which it is confronted.

The applicant has in fact decided not to pursue his application before the Commission, as counsel for the applicant informed the Secretary to the Commission in his letter of 25 July 1978.

27. This being so, the Commission notes that the applicant expressly requests the withdrawal of the application he had lodged with it.

It also observes that the problems raised in connection with Article 6(1) of the Convention are the subject of a detailed examination on the part of the Commission in connection with other applications brought against Italy and currently pending before it. Consequently, the Commission considers that there is no general ground relating to the observance of the Convention which justifies further examination of the present application.

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For these reasons, the Commission,

Having regard to Rules 41 (1)(a), 49 and 54 of its  
Rules of Procedure,

-Decides to strike Application No. 6323/73 off its list;

-Adopts the present report;

-Decides to send the present report to the Committee of  
Ministers for information, and to the parties, and to  
publish it.

Secretary to the Commission

President of the Commission

(H. C. KRÜGER)

(J. E. S. FAWCETT)