

**APPLICATION/REQUÊTE N° 11634/85**

Franco SANTILLI v/ITALY

Franco SANTILLI c/ITALIE

**DECISION** of 10 March 1989 on the admissibility of the application

**DÉCISION** du 10 mars 1989 sur la recevabilité de la requête

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**Article 8, paragraph 1 of the Convention** : *Monitoring of a bankrupt's correspondence by the trustee in bankruptcy constitutes an interference with exercise of the right to respect for correspondence.*

**Article 8, paragraph 2 of the Convention** : *Monitoring of a bankrupt's correspondence. In this case, the interference, in accordance with the law, is considered necessary for the protection of the rights of others and proportionate to the aim pursued.*

**Article 8, paragraphe 1, de la Convention** : *Le contrôle de la correspondance d'un failli par le curateur de la faillite constitue une ingérence dans l'exercice du droit au respect de la correspondance.*

**Article 8, paragraphe 2, de la Convention** : *Contrôle de la correspondance d'un failli. En l'espèce, l'ingérence, prévue par la loi, est considérée comme nécessaire à la protection des droits d'autrui et proportionnée au but visé.*

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### **Summary of the relevant facts**

*The applicant was declared bankrupt in a decision of the Pescara Court dated 26 June 1984.*

*As a result of this decision, the applicant lost the right to take legal proceedings and, for all matters concerning the administration of his property, he is represented by the receiver, in accordance with Article 42 of the Royal Decree No. 267 of 16 March 1942. By virtue of Article 48 of the Royal Decree, all correspondence addressed to a bankrupt is sent to the receiver, who has the right to keep correspondence concerning the bankrupt's property.*

*The applicant alleges a violation of Article 8 of the Convention due to the fact that his correspondence, even if private, is inspected by the receiver.*

*(TRANSLATION)*

### **THE LAW (Extract)**

1. The applicant complains that the fact that his correspondence was monitored because he had been declared bankrupt constitutes an infringement of the right to respect for his correspondence, as safeguarded by Article 8 of the Convention.

This Article reads as follows :

- "1. Everyone has the right to respect for ... his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

In this connection the Government objected that the applicant failed to exhaust domestic remedies, on the grounds that he did not petition to the judge in charge of the bankruptcy.

The Commission does not consider it necessary, in the present case, to decide whether such a petition can constitute a domestic remedy to be exhausted within the meaning of Article 26 of the Convention, since in any event this complaint is inadmissible on another ground.

It emerges from the explanations provided by the parties that, under Article 48 of Royal Decree No. 267 of 16 March 1942, all correspondence sent to the applicant is monitored by the receiver. The latter must, on penalty of criminal sanctions, keep the content of the correspondence, insofar as it does not concern the bankrupt's property, secret. The bankrupt, on the other hand, has the right to see all the correspondence addressed to him and may submit such complaints as he sees fit to the judge in charge and take legal proceedings against the actions of the receiver.

The Commission considers that the actions in dispute constitute interference with the bankrupt's right — in this case the applicant's right — to respect for his correspondence.

It notes, however, that this supervisory measure, which is prescribed by law, is designed to protect the creditors generally against any action on the part of the bankrupt that could jeopardise recovery of the debts and is based on the need to protect the interests of others.

The Commission further observes that such monitoring is not out of proportion to the aim, in view, *inter alia*, of the safeguards provided for under Italian law against unreasonable conduct on the part of the receiver. The Commission notes, in this connection, that the applicant did not avail himself of any of these safeguards.

The Commission considers that the supervision is therefore justified under Article 8 para. 2 of the Convention (cf. No. 8988/80, Dec. 10.3.81, D.R. 24 p. 198 ff.) insofar as it is designed to protect the rights of others.

In conclusion, the Commission considers that the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 of the Convention.

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