

(TRANSLATION)

THE FACTS

The facts of the case, as submitted to the Commission, may be summarised as follows.

The applicant, Antonio Sciarretta, is an Italian citizen born in 1933. He is resident in Rome, where he is a judge at the Court of Auditors (Corte dei Conti).

In an official report of 30 September 1981 addressed to the Office of the President of the Council of Ministers of the Italian Republic, Mr. V. made comments which the applicant considered defamatory to him.

On 18 January 1982 the applicant lodged a complaint (*querela*) against Mr. V. for defamation (*diffamazione*).

On 13 May 1982 the judge in charge of the case ordered it to be discontinued in accordance with Article 74 of the Code of Criminal Procedure.

On 17 November 1982 the applicant produced further documents, which he considered important, and lodged a complaint (*denuncia*) against Mr. V. regarding other offences, including those provided for in Article 324 — private interest in official acts (*interesse privato in atti d'ufficio*) — and Article 479 — issue of false documents or records (*falso ideologico*) — of the Criminal Code; he also asked for the decision to discontinue the case concerning his first complaint to be revoked.

As this request produced no result the applicant lodged a further complaint on 1 December 1982. On 4 December 1982 the investigating judge confirmed the decision to take no further action on the complaint for defamation and ordered the documents to be transmitted to the Public Prosecutor in connection with the alleged offences under Articles 324 and 479 of the Criminal Code. On 13 October 1983, at the suggestion of the Public Prosecutor's Department he ordered that no further action be taken on the complaint concerning these allegations.

The applicant lodged another complaint on 31 January 1984, and the investigating judge decided that no further action should be taken in the matter.

On 18 April 1984 the investigating judge rejected a further complaint lodged by the applicant on 21 March 1984 in an attempt to have the proceedings re-opened. An appeal to the Court of Cassation against the decision rejecting the complaint was declared inadmissible on 12 October 1984.

In its judgment the Court of Cassation stated, *inter alia*, that no remedy was available against a decision to discontinue proceedings in a case, as the decision had no judicial content. Secondly, it rejected as manifestly ill-founded a question as to the constitutionality of Article 74 of the Code of Criminal Procedure which the applicant had raised, claiming that he was unable to protect his right to honour.

COMPLAINTS

The applicant complains that the systematic discontinuation of proceedings in respect of his complaints without right of appeal, under the terms of Article 74 of the Code of Criminal Procedure deprives him of the opportunity to defend his good reputation and seek damages, in accordance with Article 2059 of the Italian Civil Code, for the non-pecuniary injury (*danno non patrimoniale*) suffered. He considers that he was unable to present his case in public and within a reasonable time in adversarial proceedings before an independent and impartial tribunal, and alleges a violation of Article 6 para. 1 of the Convention.

THE LAW

The applicant complains of the discontinuation of proceedings in respect of his complaints against Mr. V. concerning defamation and of his complaints against the same person regarding private interest in official acts and the issuing of false documents or records.

He alleges that he did not have access to an independent and impartial tribunal before which he could, within a reasonable time, assert his right to a good reputation and seek damages for the non-pecuniary injury suffered, and he invokes Article 6 para. 1 of the Convention.

Inter alia, this provision of the Convention accords everyone, "in the determination of his civil rights and obligations or of any criminal charge against him, [...] a fair and public hearing within a reasonable time by an independent and impartial tribunal".

As to the discontinuation of proceedings in respect of the complaints of defamation.

The Commission notes that the applicant's right to enjoy a good reputation is a civil right within the meaning of Article 6 para. 1 of the Convention. He was therefore entitled to have a court decide upon the existence of an attack on his honour.

The respondent Government point out that the case was referred to the Commission before a final decision had been taken by the Italian judicial authorities and that, therefore, not all domestic remedies had been exhausted in the present instance. They ask that the application be rejected for this reason.

This objection by the Government raises the question of whether and when a final decision was taken in this case. The Commission does not consider it necessary to express an opinion on this point since, even if all the domestic remedies have been exhausted, the application is inadmissible for a further reason.

The respondent Government also maintain that the applicant had a civil remedy available to him for the purpose of defending his interests, but that he preferred to lodge a criminal complaint and must therefore accept the consequences of his choice.

The Commission notes that Article 6 para. 1 of the Convention does not guarantee everyone access to a tribunal of his choice but only access to a "tribunal established by law".

It should therefore be established whether the Italian legal system offered the applicant the possibility of referring his case to a court competent to decide on the dispute concerning the right claimed by him.

The Commission notes that in Italian law the possibility of initiating proceedings for damages before a criminal court is subject to the Public Prosecutor's Department instituting criminal proceedings and that the decision to take no further action on the complaints for defamation deprived the applicant of this possibility.

Nevertheless, as an attack on his honour was involved, the applicant, instead of complaining to the criminal courts, had the opportunity to pursue a claim for damages through the civil courts on the basis of Articles 2043 and 2059 of the Italian Civil Code with a view to obtaining reparation for the pecuniary and non-pecuniary injuries suffered as a result of the alleged attack on his honour.

If he had done that, the civil courts could, with a view to awarding possible damages, have given the facts and, if appropriate, declared that an unlawful attack on the applicant's honour had occurred.

The Commission notes in this regard that the competence of the civil courts to ascertain, in cases such as the present one and where no criminal complaint has been made, whether the facts before them constitute a criminal offence is confirmed by the established case-law of the Italian Court of Cassation.

An action before the civil courts is therefore calculated to ensure full protection of the right to enjoy a good reputation: any prejudice arising from defamation, whether *pecuniary* or *non-pecuniary*, may be compensated for on the basis of the combined provisions of Articles 2043 and 2059 of the Italian Civil Code.

It follows that the applicant's complaints are manifestly ill-founded in this respect and must be rejected in accordance with Article 27 para. 2 of the Convention.

As to the discontinuation of proceedings in respect of the complaints concerning private interest in official acts and the issuing of false documents or records

The Commission recalls that, according to established case-law, Article 6 of the Convention does not guarantee as such any right to bring criminal proceedings (cf. No. 7116/75, Dec. 4.10.76, D.R. 7 p. 91).

It notes that such proceedings could not, in themselves, lead to a decision on a civil dispute within the meaning of Article 6 para. 1 of the Convention.

Consequently, the applicant's complaints concerning such proceedings are incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.