AS TO THE ADMISSIBILITY OF

Application No. 32364/96
by Antonino BARILLA'
against Italy

The European Commission of Human Rights (First Chamber) sitting in private on 22 October 1998, the following members being present:

MM	M.P. PELLONPÄÄ, President
	N. BRATZA
	E. BUSUTTIL
	A. WEITZEL
	C.L. ROZAKIS
Mrs	J. LIDDY
MM	L. LOUCAIDES
	B. MARXER
	I. BÉKÉS
	G. RESS
	A. PERENIČ
	M. VILA AMIGÓ
Mrs	M. HION
Mr	R. NICOLINI

Mrs M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 24 February 1995 by Antonino BARILLA' against Italy and registered on 22 July 1996 under file No. 32364/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Italian national born in 1934 and currently residing in Marigliano (Naples).

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant was an employee of the Alfa Lancia joint-stock company. On 9 March 1982 the applicant as well as other employees were laid off on redundancy pay (cassa integrazione). According to an agreement signed by the trade unions and the employer-company, it was foreseen that the employees return to work on 30 June 1983. However the same parties agreed, on 7 August 1983 and on 2 February 1984 respectively, that the return to work would be postponed to 31 December 1983 and then to 31 December 1984.

On 3 March 1989 the applicant filed an application with the Magistrate's Court of Pomigliano D'Arco seeking that the extension of his lay-off on redundancy pay after 1 July 1983 be declared unlawful and claiming compensation therefor. On 15 May 1990 the Magistrate's Court granted the applicant's requests, on the grounds that the agreement explicitly provided a precise date for the return to work. The Magistrate's Court decision was filed with the registry on 26 June 1990.

Alfa Lancia filed an appeal, dated 10 May 1991, with the Naples Court against the above decision. A decree dated 8 June 1991 designated the reporting judge for the appeal. Notice of the appeal was served on the applicant's lawyer on 23 November 1992.

On 14 October 1993, the Naples Court allowed the appeal. By exercising its discretionary power to examine jointly procedural objections having the same purpose, the Naples Court first rejected four procedural objections to the admissibility of the appeal raised by four parties in four different counter-appeals, including the applicant's, claiming that Alfa Lancia's appeal had been filed after the time-limit had expired. The court held that the one year time-limit for filing such an appeal, provided for in Section 327 of the Code of Civil Procedure, referred to the date on which it was filed with the registry of the competent court and not to the date on which notice of it was served on the applicant. On the merits, the court held that the agreements between the company and the trade unions were not legally binding, so that the applicant could not claim a right to return to work on a given date.

The applicant appealed the decision before the Court of Cassation. On 27 March 1995 the Court of Cassation dismissed the appeal. The decision was filed with the registry on 22 November 1995.

The applicant was later told by the employees of the registry of the Court of Cassation that the trial records (fascicolo d'ufficio) had never been received by the registry. In this respect, it is to be noted that as a general rule the Court of Cassation, which deals only with points of law, does not examine the whole record of the trial

(fascicolo d'ufficio). The court can however decide to ask the lower court for the records in case it considers it necessary (Section 123-bis of the implementation provisions of the Code of Civil Procedure).

On the other hand, on 17 January 1992 the applicant had filed a complaint with the Regional Employment Office against a further lay-off which was imposed on him on 30 October 1991. The applicant filed criminal complaints in relation to the same matter with the Naples Court, with the Employment Inspectorate, with the Minister of Work and with the President of the Republic.

The applicant was definitively dismissed from his job on 30 November 1994. The applicant having refused to sign a release (dichiarazione liberatoria), the payment of his dismissal pay was paralysed. In relation to these matters the applicant filed criminal complaints with the Naples Court, with the Employment Inspectorate, with the Minister of Work and with the Minister of Justice. These criminal complaints were either dismissed or were not followed up. Nevertheless, thanks to the intervention of the Employment Inspectorate, on 19 May 1995 the applicant obtained his dismissal pay. Since 21 June 1996 he has been in receipt of a retirement pension.

COMPLAINTS

1. The applicant complains, under Article 6, about irregularities which allegedly occurred during civil proceedings in which he was a party before the Court of Naples and before the Court of Cassation and about the decisions of these courts. In particular, the applicant submits that: a) his lawyer was served with notice of the appeal after the time-limit to file an appeal had expired; b) the document certifying that the appeal had been filed with the registry was not signed by the registrar; c) the Naples Court rejected jointly four objections to the admissibility of the appeal raised by four parties in four different counter-appeals, which demonstrates the superficial approach to the case taken by the Court of cassation; d) the Court of Cassation dismissed the appeal without having examined the trial records (fascicolo d'ufficio).

2. The applicant further complains that the criminal complaints he had filed with the Naples Court, as well as those filed with other authorities, have either been dismissed or were not followed up.

THE LAW

1. The applicant complains, under Article 6, about the irregularities which allegedly occurred during civil proceedings in which he was a party before the Court of Naples and before the Court of Cassation and about the decisions of these courts.

The Commission first recalls that the Convention organs' task "is to ascertain whether the proceedings, considered as whole ... were fair" (see for example the Schuler-Zgraggen v. Switzerland judgment of 24 June 1993, Series A no. 263, p. 21, para. 66). On the other hand, the Commission is not competent to deal with an application alleging that

errors of law or fact have been committed by domestic courts. In particular, the interpretation of domestic law and the evaluation of evidence are matters which necessarily come within the appreciation of national courts and cannot be reviewed by the Commission "unless there is an indication that the judge has drawn grossly unfair or arbitrary conclusions from the facts before him" (see, amongst many others, No. 7987/77, Dec. 13.12.79, pp. 31, 46). In the latter respect, it must be also recalled that "the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases" (see the Dombo Beheer B.V. v. The Netherlands judgment of 27 October 1993, Series A no. 274, p. 19, para. 32).

As to the circumstances of the present case, the Commission notes that some of the matters complained of were carried out in compliance with the relevant Italian law:

- the appeal was filed within the relevant time-limit of twelve months from the filing with the registry of the Magistrate's Court decision, as demonstrated by the fact that the decree designating the reporting judge in the appeal is dated 8 June 1991 (point (a) of complaint no. 1);

- it falls within a court's power of discretion to reject jointly objections which have the same purpose (point (c) of complaint no. 1);

- as a general rule the Court of Cassation, which deals only with points of law, does not examine the whole record of a trial (fascicolo d'ufficio), unless it considers it necessary (point (d) of complaint no. 1), which in the present case the Court of Cassation did not.

Furthermore, the applicant has not produced any evidence indicating that the competent Italian courts have applied the relevant domestic procedural provisions, or have used their above-mentioned discretionary powers, in an arbitrary or grossly unfair way so as to infringe the fair trial principle. Likewise, no evidence on the file shows that the lack of the registrar's signature on a certain document (point (b) of complaint no. 1) has had any consequences for the fairness of the trial.

This part of the application must therefore be dismissed as being manifestly ill-founded, within the meaning of Article 27 para. 2, of the Convention.

2. The applicant further complains that the criminal complaints he had filed with the Naples Court, as well as those filed with other authorities, have either been dismissed or were not followed up.

In this respect, the Commission recalls that the right to bring criminal proceedings against a third person is not guaranteed, as such, by the Convention (No. 7116/75, Dec. 4.10.76, D.R. 7, p. 91). It follows that this complaint is incompatible ratione materiae with the Convention provisions and that it must be rejected in conformity with Article 27 para. 2, of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber