CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 40457/98
by Francesco CUZZILLA
against Italy

The European Court of Human Rights (Second Section) sitting on 14 October 1999 as a Chamber composed of

Mr C. Rozakis, *President*,
Mr M. Fischbach,
Mr B. Conforti,
Mr G. Bonello,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mrs M. Tsatsa-Nikolovska, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 4 December 1997 by Francesco Cuzzilla against Italy and registered on 26 March 1998 under file no. 40457/98;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the Court's partial decision of 2 February 1999;

Having regard to the observations submitted by the respondent Government on 31 May 1999 and the observations in reply submitted by the applicant on 11 and 28 June 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Italian national, born in 1939 and living in Rome.

A. Particular circumstances of the case

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

Criminal proceedings brought against the applicant

On 12 December 1991 D.N.R. filed a criminal complaint against the applicant and S.C. for extortion.

On the same day S.C. was arrested in the process of committing the offence. Shortly afterwards, the applicant's house was searched by some police officers without a warrant previously issued by the judicial authorities. The documents show that the police officers were looking for two cheques. However, they did not find them in the applicant's house.

On the same day, following the search, the applicant was taken to the police station, where he was kept for some hours. The documents show that during this period the police officers prepared the verbatim record of the house search according to which the applicant had been informed of his rights. The applicant, without making any comments, signed the verbatim record.

On 13 December 1991, the Public Prosecutor attached to the Rome District Court validated the search.

On 16 December 1991, the Public Prosecutor requested that the applicant be remanded in custody. On the same day the Judge of the Preliminary Investigations issued an arrest warrant.

The applicant was detained from 7 January 1992 to 31 March 1992.

On 31 March 1992 the applicant and his co-accused were committed for trial before the Rome District Court.

The first hearing was set for 19 June 1992, but was adjourned to 10 October 1992 because of a lawyers' strike.

The following hearing was set for 12 January 1993, but was adjourned *ex officio* to 9 February 1993.

The following hearing was set for 11 May 1993, but was adjourned *ex officio* to 7 October 1993.

On 7 October 1993, the applicant's lawyer requested an adjournment of the proceedings, which was granted by the Court.

Further hearings were set for 18, 19 and 23 November 1993 and 11 January 1994.

On 11 January 1994, the hearing was adjourned to 23 June 1994 with the applicant's agreement.

On 23 June 1994, the hearing was adjourned to 22 September 1994 because of a lawyers' strike.

On 22 September 1994, the lawyer of the applicant's co-accused requested an adjournment of the proceedings, which was granted by the Court.

Further hearings were set for 12 December 1994 and 18 April and 3 July 1995.

On 3 July 1995, the lawyer of the applicant's co-accused requested an adjournment of the proceedings, which was granted by the Court.

The following hearings were set for 9 January, 5 March and 26 April 1996.

On 26 April 1996, the hearing was postponed *ex officio* to 23 May 1996.

The following hearing was set for 18 June 1996.

On 18 June 1996, the Rome District Court replaced the original charge of extortion with one of fraud. The Court therefore ruled that the proceedings be discontinued, as the requisite formal criminal complaint (*querela*) had not been lodged by D.N.R..

On 18 October 1996 the judgment was filed with the court's registry.

On 23 December 1996 the applicant filed an appeal against the judgment.

On 24 March 1998 the Court of Appeal acquitted the applicant.

On 29 June 1998 the judgment became final.

Criminal proceedings instituted by the applicant

On 1 March 1995 the applicant filed a criminal complaint against the Public Prosecutor who had validated the house search, requested that he be remanded in custody and committed him for trial, together with the police officers who had carried out the search and kept him at the police station for a few hours.

On 20 June 1997 the case was dismissed by the Judge of Preliminary Investigations.

This decision in particular shows that the requirements for a conviction of trespass (*violazione di domicilio*, Article 614 of the Criminal Code) were not met, as the requisite intention to offend was missing and as the house owner's lack of consent had not been expressed, the applicant having signed the verbatim record of the events. Moreover, the only remedy available under Italian law to challenge the lawfulness of a search - that is compliance with the procedural formalities - was an essentially procedural sanction consisting in the judge being prevented from using any evidence which might have been found during the search and, if applicable, disciplinary proceedings instituted against the police officers.

B. Relevant domestic law and practice

According to the case-law of the Italian Court of Cassation, the lawfulness of a house search warrant and of the order by which the house search is validated cannot be challenged (Court of Cassation, section I, decision of 8 March 1994 n° 299) unless the search has ended with a seizure (Court of Cassation, section VI, decision of 17 October 1994, n° 2289; section V, decision of 13 September 1990, n° 3498).

Where the house search ends with a seizure, the lawfulness of the seizure can be challenged under Article 324 of the Code of Criminal Procedure.

COMPLAINTS

1. The applicant complains about the length of the criminal proceedings brought against him. He invokes Article 6 of the Convention.

2. In a letter of 18 April 1999, the applicant complained, under Article 6 of the Convention, about the lack of fairness of the criminal proceedings brought against him.

3. The applicant complains, under Article 8 of the Convention, about the unlawfulness of the house search carried out by the police officers on 12 December 1991, without a warrant previously issued by the Public Prosecutor and while he was not in *flagrante delicto*, the only situation which entitles police officers without warrant to carry out a search.

PROCEDURE

The application was introduced on 4 December 1997 and registered on 26 March 1998.

On 2 February 1999 the Court decided to communicate to the respondent Government the applicant's complaints concerning the length of the criminal proceedings brought against him and the allegedly unlawful house search and to declare the remainder of the application inadmissible.

In a letter of 18 April 1999, the applicant, invoking Article 6 of the Convention, complained about the lack of fairness of the criminal proceedings brought against him.

The Government's written observations were submitted on 31 May 1999, after an extension of the time-limit fixed for that purpose. The applicant replied on 11 and 28 June 1999.

THE LAW

1. The applicant complains that the proceedings brought against him were unreasonably long. Those proceedings began on 12 December 1991, when the house search was carried out, and ended on 29 June 1998, when the decision of the Rome Court of Appeal became final. The applicant alleges that the length of the proceedings - a period of about six and a half years - is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

The Government consider that, having regard to the number of hearings in the first instance proceedings, the length of the proceedings cannot be seen as unreasonable. Furthermore the Government observe that six of those hearings were adjourned as requested by the applicant's lawyer or his co-accused's lawyer.

The applicant contests the Government's arguments. He submits that the case was not at all complex. He alleges that the length of the first-instance proceedings was due to the workload and the malfunctioning of the Rome District Court.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

2. In a letter of 18 April 1999, the applicant complained, under Article 6 of the Convention, about the lack of fairness of the criminal proceedings brought against him.

The Government did non submit observations in this regard.

Even assuming that this complaint has been introduced within the six-month period required by Article 35 § 1 of the Convention, the Court considers that it is in any event inadmissible for the following reasons.

The Court notes that at the end of the proceedings the applicant was acquitted of the offence with which he had been charged. Under these circumstances, any defects the proceedings might have had must be considered to have been remedied by the acquittal decision (Lüdi v. Switzerland judgment of 15 June 1992, Series A n° 238, p. 18, § 34). It follows that the applicant can no longer claim to be a victim, within the meaning of Article 34 of the Convention, of a violation of Article 6 of the Convention.

This complaint is therefore manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

3. The applicant complains, under Article 8, about the lawfulness - i.e. compliance with the procedural formalities - of the search carried out by the police officers in his home.

Article 8 of the Convention provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authorities 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 and morals, or for the protection of rights and freedoms of others."

The Government raise an objection of inadmissibility on the ground that the house search was carried out more than six months before the introduction of the application.

Furthermore, the Government observe that the applicant failed to exhaust the remedy provided by Article 324 of the Code of Criminal Procedure.

On the merits, the Government observe that the house search did not constitute an interference with the applicant's right to respect for his private life and home. In any case, even assuming that there was an interference, contrary to the applicant's allegations such interference was "in accordance with the law". The Government also submit that the search at issue was carried out by the police, who had grounds to believe that there was a situation of *flagrante delicto*, in order to seize documents allegedly related to extortion, and was therefore "necessary in a democratic society" for legitimate aims.

The applicant objects that the six-month period started to run on 20 June 1997, when the Judge of the Preliminary Investigation dismissed the criminal complaint lodged by him against third parties. The applicant submits that this remedy must be regarded as effective and to be exhausted. He further observes that for strategic reasons he filed the criminal complaint at issue only on 1 March 1995, namely more than three years after the house search had been carried out, and that he could do so at any time within the limitation period after which the offence became time-barred.

On the merits, the applicant insists that the way in which the search was conducted was in breach of the law.

The Court recalls that, pursuant to Article 35 § 1 of the Convention, it can only deal with a matter after exhaustion of domestic remedies and within a period of six months from the date on which the final decision was taken. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (Aksoy v. Turkey judgment of 18 December 1996, Reports of Judgments and Decisions 1996-VI, pp. 2275-76, §§ 51-52). Nonetheless, when there is no remedy available under the national law which might be considered effective and adequate, the six-month period begins to run from the date of the alleged violation or of its disclosure (Eur. Comm. HR, No. 23413/94, Dec. 28.11.95, D.R. 83, p. 31; No. 20357/92, Dec. 7.3.94, DR 76, p. 80).

The Court observes that the applicant did not avail himself of the remedy indicated by the Government. In this respect the Court notes that the house search at issue did not end with a seizure. Therefore, according to the relevant provisions of the Italian Code of Criminal Procedure and to the case-law of the Italian Court of Cassation, the remedy indicated by the Government was not available to the applicant.

As to the Government's objection that this complaint was not introduced within the six-month period, the Court considers that it is not necessary to examine whether the criminal proceedings instituted by the applicant can be considered as an effective and adequate remedy to be exhausted within the meaning of Article 35 § 1 of the Convention. In fact, even assuming that this complaint was introduced within the six-month period required by Article 35 § 1 of the Convention, the Court considers that it is in any event inadmissible for the following reasons.

The Court notes that it results from the file that on 12 December 1991 the applicant signed, without making any comments, the verbatim record of the house search according to which he had been informed of his rights. In the present case nothing suggests that the applicant signed the verbatim record under duress or constraint.

Under these circumstances, the Court considers that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaint concerning the length of the criminal proceedings brought against him;

DECLARES INADMISSIBLE the remainder of the application.

Erik Fribergh
Registrar

Christos Rozakis
President