AS TO THE ADMISSIBILITY OF

Application No. 36453/97
by Margherita DE GIORGI
against Italy

The European Commission of Human Rights (First Chamber) sitting in private on 1 July 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
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
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 29 January 1997 by Margherita DE GIORGI against Italy and registered on 11 June 1997 under file No. 36453/97;

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 currently residing in Acqui Terme, Alessandria.

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

The applicant was married to A.A.; they have two daughters, born respectively on 16 June 1984 and on 16 June 1986, and a son, born on 4 June 1990. On an unspecified date the applicant legally separated from her husband and obtained the custody over her daughters.

In March 1986 the applicant requested the Juvenile Court of Turin to deprive her husband of his parental authority over their daughters. The Court rejected the applicant's request.

Since then, the applicant's case was monitored by the social workers. From their reports the applicant appeared to be mentally instable and not to be able to take care of the daughters, who, in

turn, were reported to be in bad physical, hygienic and psychological conditions. The applicant's financial situation was also difficult.

On 31 December 1988 the Juvenile Court of Genova therefore issued proceedings aiming at placing the applicant's daughters for adoption.

On 2 January 1989, pending the above proceedings, the two children were placed in an Institute.

On 26 May 1989 the Juvenile Court of Genova declared its territorial incompetence and sent the case before the Juvenile Court of Turin.

Several medical reports ordered by the latter Court stated that the applicant was incapable of understanding her daughters' basic material and emotional needs. On 10 October 1991 a further medical report stated that the applicant suffered from structural psychological disorders.

On 13 December 1991 the Juvenile Court of Turin issued a decision declaring the two children available for adoption on the ground that the applicant was unable to take care of them as documented in several medical and social worker's reports submitted to the Court's attention.

On 20 March 1992 the Juvenile Court of Turin refused the opposition that the applicant had filed against the above decision.

The applicant appealed the latter decision to the Turin Court of Appeal, Juvenile Section.

In the course of the appeal proceedings, further medical experts were heard. The applicant was diagnosed as suffering from serious personality disorders (disturbo paranoide della personalità), while the applicant's house was reported to be in very bad hygienic conditions.

By a judgment filed with the registry on 15 March 1993, the Turin Court of Appeal confirmed the availability for adoption of the two children.

The applicant's appeal on point of law against this judgment was refused by the Court of Cassation by its judgment of 11 January 1994 which was filed with the registry on 26 July 1994.

On 7 December 1993 the applicant's son was also declared available for adoption by a decision of the Turin Juvenile Court.

The applicant filed an opposition to this decree, which was rejected on 10 March 1994 by the same court. This decision was filed with the registry on 29 March 1994. The applicant appears not to have appealed against it.

COMPLAINTS

The applicant complains that her three children have been declared available for adoption. She does not invoke any specific provision of the Convention.

THE LAW

The applicant complains that she was separated from her children. In the Commission's opinion, this complaint falls to be examined under Article 8 (Art. 8) of the Convention.

However, the Commission is not required to examine whether this complaint discloses a violation of the Convention, as the application is inadmissible for the following reasons.

The Commission recalls that, pursuant to Article 26 (Art. 26) of

the Convention, it can only deal with a matter within a period of six months from the date on which the final decision was taken.

The Commission recalls that the running of the six months period is interrupted by the first letter from the applicant, setting out summarily the object of the application, provided that the letter is not followed by a long delay before the application is completed (No. 15213/89, Dec. 1.7.91, D.R. 71, p. 230).

The Commission recalls that it would be contrary to the aim and spirit of the six months rule set out in Article 26 (Art. 26) of the Convention if, by any initial communication, an applicant could set into motion the proceedings under Article 25 (Art. 25) of the Convention and then remain inactive for an unexplained and unlimited length of time. The Commission has constantly rejected applications where an applicant submitted an application more that six months after the date of the final decision when there where no special circumstances suspending the running of this period. The Commission finds that it would be inconsistent with the aim and purpose of the six month rule to deviate from this rule in a situation where an application has been introduced under Article 25 (Art. 25) of the Convention within six months of the final decision but thereafter not pursued (see No. 10626/83, Dec. 7.5.85, D.R. 42, pp. 205, 207 and No. 15213/89, Dec. 1.7.91, D.R. 71, pp. 230, 234).

In the present case, the Commission observes that the applicant's first communication to the Commission, in which she expressed the wish to lodge an application, was dated 23 June 1994. The applicant was warned that a possible failure on her part to complete her application within a reasonably short time might have affected the date of introduction of her application.

On 7 October 1994 the applicant was requested to submit a copy of the final decision of the Court of Cassation in her case, decision which had been filed with the registry on 26 July 1994.

The applicant replied only on 29 January 1997. Although she claims that she did not have knowledge of the judgment before 28 January 1997, the Commission observes that the applicant has herself submitted the letter which her lawyer sent her on 17 October 1996 enclosing the judgment at issue.

The Commission further considers that, in any event, even assuming that the applicant had difficulties in obtaining the requested document, she could have kept contacts with the Secretariat explaining so. The Commission underlines that the applicant did not write at all for about two years and four months.

Therefore,notwithstanding the applicant's initial submission of 23 June 1994, the Commission considers 29 January 1997 to be the date of introduction of the present application.

The Commission further considers that the final decisions in the present case are that of the Court of Cassation of 11 January 1994, which was filed with the registry on 26 July 1994, as regards the applicant's daughters, and that of the Turin Juvenile Court of 10 March 1994 which was filed with the registry on 29 March 1994, as regards the applicant's son.

It follows that the present application has been introduced out of time and must therefore be rejected under Article 27 para. 3 (Art. 27-3) 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