CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 53490/99
by Edward EID
against Italy

The European Court of Human Rights (Second Section), sitting on 22 January 2002 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr V. ZAGREBELSKY,
Mrs A. MULARONI, *judges*,

and Mrs S. DOLLE, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 13 May 1998 and registered on 17 December 1999,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Edward Eid, was born in 1958 and lives in Toledo (United States of America). He has double nationality (American and Lebanese).

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

1. The applicant's arrest and subsequent detention with a view to extradition

On 29 August 1996 the applicant was arrested in Italy in execution of a warrant issued by the Michigan District Court on 5 November 1993. The applicant had been sentenced in the United States to forty-six months' imprisonment for drug smuggling and money laundering.

A hearing before the Rome Court of Appeal was scheduled for 31 August 1996. On that occasion the applicant was assisted by a lawyer and an interpreter.

By an order of 31 August 1996, the Rome Court of Appeal validated the applicant's arrest and placed him in detention with a view to extradition. It observed that the American authorities had declared their intention to apply for the applicant's extradition according to the Bilateral Extradition Treaty between Italy and the United States of America (signed on 13 October 1983 and ratified by Italian law n° 225 of 26 May 1984). Taking into account the fact that the applicant had absconded for at least three years, the Court of Appeal considered that a restrictive measure was necessary to prevent him from fleeing pending trial. This decision was served on the applicant on 18 September in its Italian version only.

In the meantime, on 4 September 1996, the applicant was heard by a magistrate of the Rome Court of Appeal. He declared that he did not accept extradition to the United States.

On 14 October 1996 the applicant personally introduced a claim for immediate release before the Rome Court of Appeal. This claim, drafted in Italian, was based on Article XII of the Bilateral Extradition Treaty, according to which the provisional arrest of a person to be extradited should be revoked if an extradition request was not lodged with the competent executive authority within a forty-five day time-limit.

By an order of 16 October 1996, the Rome Court of Appeal dismissed the applicant's claim. It observed that on 12 October 1996 the American authorities had filed with the Ministry of Foreign Affairs a request for the applicant's extradition. The time-limit laid down in Article XII of the Bilateral Extradition Treaty had therefore been complied with. This order was served on the applicant on 29 October 1996.

On 9 November 1996 the applicant appealed on points of law. He alleged that the term "executive authority" contained in Article XII § 4 of the Bilateral Extradition Treaty could not be understood as a reference to the Ministry of Foreign Affairs, and considered that the request for his extradition should have been lodged with the Ministry of Justice or with the Court of Appeal itself. He also maintained that there was no evidence that the extradition had actually been requested.

The result of this appeal is not known.

On 17, 23, 28, 29 and 31 October, as well as on 2, 4, 5 and 9 November 1996, the applicant personally lodged a number of claims, drafted in English, with the Rome Court of Appeal. Invoking *inter alia* Articles 3, 5 § 2, 6 § 3 (a) and (d) of the Convention, he alleged that his arrest and detention were tantamount to torture or inhuman treatment, that none of the official documents concerning his deprivation of liberty had been translated into English and that he should be immediately released. He also observed that the doctor attached to the prison was unable to deal with his nerve, back and chronic ulcer problems and requested a visit from a specialised doctor, assisted by an interpreter, or a transfer to a private hospital for clinical tests. The applicant also requested the attendance and examination of a number of witnesses who could have testified that the United States wished to punish him by reason of his political beliefs.

On 11 November 1996 the applicant, relying *inter alia* on Articles 6 § 3 (b), (c) and (e) and 14 of the Convention, requested permission to defend himself in person, to have adequate time and facilities for the preparation of his defence, to have the free assistance of an interpreter and not to be discriminated against on grounds of language and national origin.

By an order of 12 November 1996, the Rome Court of Appeal declared the applicant's claims inadmissible as they had been drafted in a foreign language. It observed that, according to the relevant provisions of the Code of Criminal Procedure (hereinafter the "CCP"), a person should be assisted by an interpreter at the trial hearing and that the only material which should be translated was that addressed to the person to be extradited or made in front of him or her by the authorities. No free translation was provided when, as in the present case, the person to be extradited was addressing, almost on a daily basis, various different claims to the judicial authorities. In any case, the person to be extradited was entitled, under Italian law, to the assistance of an Italian-speaking lawyer and/or to the consular assistance of his or her own Embassy. On 29 November 1996 this decision was served on the applicant in its Italian and English versions.

On 11 December 1996 the applicant appealed on points of law to the Court of Cassation against the order of 12 November 1996, which he considered to be discriminatory in nature and based on a misinterpretation of the CCP and the Convention. He also alleged that he had never been

offered consular assistance from the United States Embassy. The result of this appeal is not known.

In the meantime, on 26 November 1996 the applicant personally introduced a claim, drafted in Italian, before the Rome Court of Appeal. He requested the appointment of a lawyer, the assistance of an interpreter and the translation of the Criminal Code (hereinafter, the "CC"), of the CCP and of all the documents received up to then.

By an order of 3 December 1996, the Rome Court of Appeal rejected this claim, pointing out that the applicant had already been provided with an English translation of all the relevant legal acts and that an interpreter had been appointed for the hearing on extradition scheduled for 19 December 1996. It also observed that the applicant was already assisted by a lawyer of his own choosing, who had a thorough knowledge of the Italian language. Italian law did not provide for the translation of the CC or the CCP. This decision was served on the applicant in English.

2. The decisions on the United States' request for extradition

The hearing scheduled for 19 December 1996 was postponed. On 30 January 1997, the Rome Court of Appeal requested the American authorities to provide evidence showing that the charges against the applicant were not time-barred.

The hearing on the extradition request before the Rome Court of Appeal was scheduled for 17 April 1997. A copy of the summons for trial was served on the applicant in its English version. At the public hearing the applicant declared that the real aim of the extradition was to persecute him because of his political opinions.

By a judgment of 17 April 1997, filed with the registry on 12 May 1997, the Rome Court of Appeal ruled in favour of the applicant's extradition in relation to the charge of financial transaction of goods originating from drug trafficking. It observed that the applicant had been convicted in the United States (on the basis, *inter alia*, of his confession) only for that crime and not, as wrongly indicated in the order of 31 August 1996, for drug trafficking. As to the merits of the request, the Court of Appeal noted that, according to the relevant provisions of the Bilateral Treaty, the American authorities had provided a copy of the applicant's conviction and of the subsequent warrant for his arrest, a full description of the facts for which the extradition was requested and of their legal qualification in the American system. Moreover, nothing in the file showed that the extradition was aimed at persecuting the applicant on racial, religious or political grounds. As regards the alleged time-bar on the charge, it appeared from the documents produced by the American authorities that United States law prohibited the execution of a penalty only if the formal accusation was made more than five years after the date on which the offence had allegedly been committed. However, the crime for which the applicant's extradition was requested had

been committed on 19 February 1988, while the formal indictment had been issued on 1 February 1993. Therefore, the five year time-limit had not expired.

On 6 June 1997, this judgment was served on the applicant in its Italian and English versions.

The applicant appealed on points of law.

By an order of 4 September 1997, the Court of Cassation scheduled the hearing for 10 October 1997 and appointed a legal representative. This order was served on the applicant in Italian on 5 September 1997.

On 13 September 1997 the applicant requested the Court of Cassation to appoint an interpreter for the hearing of 10 October 1997. The proceedings were subsequently adjourned until 5 December 1997. The applicant alleges that on that date he was refused the assistance of a lawyer and/or of an interpreter.

By a judgment of 5 December 1997, the Court of Cassation rejected the applicant's appeal.

On 6 December 1997 the applicant requested the Court of Cassation to declare that the extradition procedure was null and void, as he had been denied the assistance of a legal representative and an interpreter. The result of this claim is not known.

On 22 January 1998 the Ministry of Justice granted the United States' extradition request.

On 27 February 1998 the applicant was extradited to the United States, where he was imprisoned until 23 December 1999, having served his sentence with remission.

COMPLAINTS

1. Invoking Article 5 §§ 2, 3 and 4 of the Convention, the applicant complains about the unlawfulness of his detention with a view to extradition and the refusal of his claims for immediate release. He alleges that he was not informed of the reasons for his arrest.

2. Invoking Article 6 §§ 1 and 3 of the Convention, the applicant challenges the fairness of the extradition proceedings.

3. The applicant alleges that, contrary to Article 14 of the Convention, he was discriminated against on the ground of his national origin.

THE LAW

1. The applicant challenges the unlawfulness of his detention with a view to extradition. He invokes Article 5 §§ 2, 3 and 4 of the Convention. In so far as relevant, this provision reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

a) Under Article 5 §§ 2 and 4 of the Convention, the applicant complains about the rejection of his claims for immediate release. He alleges that he was deprived of the assistance of a legal representative and an interpreter, and that not all the relevant documents were translated into English.

The Court first notes that that the Rome Court of Appeal addressed the question of the lawfulness of the applicant's detention at the hearing on 31 August 1996, two days after his arrest. On that occasion, the applicant was assisted by a lawyer and an interpreter. Nothing in the file suggests that the applicant was unable to obtain information concerning the grounds for his arrest, which constituted the object of the hearing, or that the interpreter did not provide a fair translation of the explanations given in Italian.

Moreover, on 4 September 1996 the applicant declared, before a magistrate of the Rome Court of Appeal, that he did not accept his extradition to the United States and therefore showed that he had understood the nature of the proceedings brought against him, as well as the reasons and legal basis of his detention (see Day v. Italy, no. 34573/97, Commission's decision of 21 May 1998, unpublished).

The Court also emphasises that the applicant had the opportunity of having the lawfulness of his detention reviewed by the Italian judicial authorities and, indeed, on many occasions challenged the legal basis of his detention. The fact that his claims were not successful, or that they were rejected because the applicant had failed to comply with the formalities required by Italian law, cannot in itself disclose any appearance of a violation of Article 5 § 4 of the Convention.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

b) As far as the applicant's allegations under Article 5 § 3 of the Convention may be understood as a complaint about the length of his deprivation of liberty, the Court first observes that the applicant's arrest and subsequent detention with a view to extradition were justified under sub-paragraph (f) of Article 5 § 1. Nothing in the file shows that the national authorities violated domestic law or that they infringed the applicant's rights under Article 5 in an arbitrary manner.

The Court reiterates that Article 5 § 3, which embodies the right of every person arrested or detained to be judged within a reasonable time or to be released pending trial, refers only to paragraph 1 (c) of Article 5 (see the De Wilde, Ooms and Versyp v. Belgium judgment of 18 June 1971, Series A no. 12, p. 39, § 71). It does not therefore apply to detention with a view to extradition within the meaning of Article 5 § 1 (f). However, it is clear from the wording of both the French and the English versions of this provision that deprivation of liberty will be justified only for as long as extradition proceedings are being conducted. It follows that if such proceedings are not being pursued with due diligence, the detention will cease to be justified under Article 5 § 1 (f) (see the Quinn v. France judgment of 22 March 1995, Series A, no. 311, p. 19, § 48).

In the present case, the applicant was arrested on 29 August 1996 and extradited to the United States on 27 February 1998. The extradition proceedings thus lasted nearly 18 months.

The Court notes that, at the different stages of the extradition proceedings, there were some delays for which the judicial authorities may be held responsible: the hearing on the extradition request was initially scheduled for 19 December 1996, three months and twenty days after the applicant's arrest; moreover, this hearing was postponed twice, first until 30 January 1997, then until 17 April 1997, the date on which the Rome Court of Appeal ruled in favour of the applicant's extradition. These postponements caused a further delay of three months and twenty-nine days. As concerns the proceedings before the Court of Cassation, the Court notes that the hearing of 10 October 1997 was adjourned until 5 December 1997, which is one month and twenty-five days later.

However, the Court is of the opinion that these delays, which amounted to a global period of nine months and fourteen days, were not substantial

enough to justify a finding that the overall duration of the extradition proceedings was excessive. In particular, the Court has had regard to the fact that three different national authorities - the Rome Court of Appeal, the Court of Cassation and the Ministry of Justice - gave a ruling on the applicant's extradition within the period concerned. Moreover, some of the delays were due to steps taken by the Italian judicial authorities in the interests of the applicant (e.g. the postponement of the hearing before the Rome Court of Appeal from 30 January until 17 April 1997). Furthermore, the remedies of which the applicant availed himself to challenge the lawfulness of his detention and of the extradition request contributed to some extent to the length of the proceedings. Finally, the applicant was extradited to the United States soon after the Ministry's decision.

In these circumstances, the Court considers that even if the extradition proceedings could have been dealt with faster, no appearance of violation of Article 5 § 1 (f) of the Convention has been disclosed in the present case (see, in particular, Whitehead v. Italy, no. 13930/88, Commission's decision of 11 March 1989, Decision and Reports (DR) 60, pp. 272, 281-282, where a detention with a view to extradition which lasted approximately sixteen months was not considered excessive, and, *a contrario*, the Quinn v. France judgment, quoted above, pp. 19-20, §§ 48-49).

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant next complains about the unfairness of the extradition proceedings. He invokes Article 6 §§ 1 and 3 (a), (b), (c) and (e) of the Convention, which guarantees certain defence rights in the determination of a criminal charge.

The Court recalls that the words "determination ... of a criminal charge" in Article 6 § 1 of the Convention relate to the full process of examining an individual's guilt or innocence in respect of a criminal offence, and not merely to the process of determining whether or not a person may be extradited to a foreign country (see *Raf v. Spain* (partial dec.), no. 53652/00, ECHR 2000-XI, and *A. B. v. Poland* (partial dec.), no. 33878/96, 18.10.2001, unpublished). This provision is therefore not applicable to the proceedings concerning the extradition of the applicant to the United States.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

3. The applicant considers that the way in which he was judged and deprived of his liberty in Italy amounted to discrimination on the ground of national origin, contrary to Article 14 of the Convention.

The Court recalls that Article 14 protects individuals placed in similar situations from discrimination in the enjoyment of their rights under the Convention and its Protocols. However, in the present case the applicant has

failed to show that he had been treated differently from persons in a comparable situation.

It follows that this complaint is unsubstantiated and must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President