AS TO THE ADMISSIBILITY OF

Application No. 31143/96
by Rosario INDELICATO
against Italy

The European Commission of Human Rights sitting in private on 15 September 1997, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
Mrs. M. HION
MM. R. NICOLINI
A. ARABADJIEV

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 4 February 1994 by Rosario INDELICATO against Italy and registered on 24 April 1996 under file No. 31143/96;

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 1959. Before the Commission he is represented by his wife, Mrs. Rosa Maria Cirrotta.

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

On 4 May 1992 the Palermo Judge for Preliminary Investigations

issued a warrant of arrest against the applicant.

The latter was arrested on 6 May 1992 on suspicion inter alia of belonging to a mafia-type organisation and remanded in custody; he was taken to Palermo prison.

On 20 July 1992 the applicant was transferred to Pianosa island prison as a consequence of a series of anti-mafia measures introduced by the Italian Government during the summer of 1992. He was held in the high security section of Pianosa prison under Article 41-bis of Law no. 354 of 26 July 1975, as amended by Law Decree no. 306 of 8 June 1992, converted into Law no. 356 of 7 August 1992.

On the night of his arrival in Pianosa, the applicant was allegedly tortured and ill-treated by the prison guards. Thereafter, he was often woken up and forced to take cold showers during the night, subjected to arbitrary beatings with sticks, to repeated squeezing of his testicles and to repeated threats and insults by the guards. He submits that he now suffers from a serious medical condition as a result of the beatings and of undernourishment; he also alleges that he has lost four teeth.

He was not allowed any visits from his family for a month. His wife was eventually permitted to visit him on 20 August 1992.

On 10 September 1992, the applicant's wife filed a criminal complaint against the Pianosa Prison governor and guards before the Livorno Public Prosecutor's Office on account of the ill-treatment suffered by the applicant.

On the same day, the applicant filed with Palermo Public Prosecutor's Office a request to be transferred from Pianosa to another prison closer to Palermo as well as a request that a medical doctor appointed by him be allowed to examine him in prison. These requests were rejected at a date which has not been specified.

On 1 March 1993 the Marsala Judge for Preliminary Investigations ordered that the applicant be remanded in custody.

The Judge for Preliminary Investigations was allegedly murdered by "mafiosi" at a date which has not been specified.

At an unspecified date, the applicant was committed for trial before the Marsala Court together with thirty co-accused.

On 23 September 1993, the applicant was transferred to Termini Imerese prison (Palermo).

On 11 June 1994 the applicant applied to the Marsala Court seeking an order for his release on the ground that the time-limit for detention on remand had expired. This request was refused by decision of 15 June 1994.

On 7 February 1995 the applicant renewed his application for release to the Marsala Court, which rejected the request by a decision of 11 February 1995, holding it to be essentially identical with the earlier request which it had dismissed on 15 June 1994.

Following an appeal lodged by the applicant against the renewal of the application of Rule 41-bis in his case, the Florence Execution Court ("Tribunale di sorveglianza") by a decision of 7 February 1995 reduced the scope of application of Article 41-bis in the applicant's case.

By a judgment of 26 May 1995, filed with the Registry on 24 October 1995, the Marsala Court convicted the applicant of belonging to a criminal organisation and sentenced him to 12 years imprisonment.

The applicant appealed to the Palermo Court of Appeal.

The applicant was transferred back to Pianosa island prison. Since September 1995, he has been held in solitary confinement.

On 7 June 1996, the applicant's wife requested to be informed pursuant to Article 408 of the Code of Criminal Procedure of the possible decision to dismiss her criminal complaint of 10 September 1992.

By judgment of 16 April 1997, the Palermo Court of Appeal acquitted the applicant.

COMPLAINTS

1. The applicant complains in the first place about the ill-treatment to which he was allegedly subjected while he was held in the high security section of Pianosa island prison. In particular, he submits that he was undernourished and subjected to arbitrary beatings with sticks, repeated threats and insults by the guards.

He further complains that he has since September 1995 been held in solitary confinement without any legal basis therefor.

He alleges a violation of Article 3 of the Convention in these respects.

2. The applicant further complains under Articles 5 para. 3 and 6 para. 1 of the Convention about the length of his detention on remand.

He also submits that his subjection to a high security regime under Article 41-bis of Law no. 354 of 26 July 1975, as amended by Law Decree no. 306 of 8 June 1992, converted into Law no. 356 of 7 August 1992, notwithstanding his clean record, violated the principle of presumption of innocence provided for by Article 6 para. 2 of the Convention.

3. The applicant alleges that his case has not been dealt with by an impartial tribunal, in breach of Article 6 para. 1 of the Convention, because of the tense political climate of that time and particularly because of the murder by the mafia of the Marsala Judge for Preliminary Investigations by the mafia.

He also alleges a violation of Article 6 para. 3 (b) of the Convention in that his detention in Pianosa during the preliminary investigations, while the trial took place in Sicily, prevented him from meeting his lawyer as often as it would have been necessary for the purposes of an adequate defence.

4. The applicant also complains that under Article 41-bis of Law no. 354/1975 he is allowed to meet his relatives only once a month for a period of an hour, and that he is always separated from them by a glass and can only communicate through an interphone. He alleges a violation of Article 8 of the Convention in this respect.

5. The applicant finally complains that he is prevented from attending Mass on Sundays. He alleges a violation of Article 9 of the Convention.

THE LAW

1. The applicant complains in the first place that he was ill-treated by the prison guards while held in Pianosa prison. Furthermore, he complains that he has since September 1995 been held in solitary confinement without any legal basis therefor. He alleges a violation

of Article 3 (Art. 3) of the Convention.

The applicant further alleges a violation of Article 8 (Art. 8) of the Convention on account of the circumstances of his meetings with his family.

The applicant also complains that during his detention on remand on Pianosa island he has been prevented from attending Mass on Sundays. He alleges a violation of Article 9 (Art. 9) of the Convention.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 48 para. 2 b) of the Rules of Procedure, to give notice of this part of the application to the respondent Government.

2. The applicant further complains that he was detained on remand for three years, between his arrest on 6 May 1992 and his conviction and sentence by the Marsala Court on 26 May 1995. He alleges a violation of Article 5 para. 3 (Art. 5-3) of the Convention which provides that "everyone arrested or detained on remand (...) shall be entitled to trial within a reasonable time or to release pending trial (...)."

However, the Commission is not required to decide whether or not this complaint discloses any appearance of a violation of the Convention, as, pursuant to Article 26 (Art. 26) of the Convention, it can only deal with a matter after all domestic remedies have been exhausted.

The Commission observes that in the present case the applicant applied twice, on 11 June 1994 and 7 February 1995, to the Marsala Court seeking an order for his release on grounds that the time-limits for detention on remand had expired. However, the Commission notes that the applicant has failed to appeal on points of law against the decisions of 15 June 1994 and 11 February 1995, rejecting his requests.

It follows that the applicant has failed to avail himself of the remedy which was at his disposal under domestic law. The Commission furthermore considers that there are no special circumstances in the present case that could absolve the applicant from exhausting this remedy.

It follows that this complaint must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

3. The applicant also alleges that his detention on remand subject to a high security regime notwithstanding his clean record was in breach of Article 6 para. 2 (Art. 6-2) of the Convention, according to which "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

The Commission observes that the principle of presumption of innocence cannot be understood as forbidding detention pending trial, which is permitted under Article 5 paras. 1 (c) and 3 (Art. 5-1-c, 5-3) of the Convention, or restrictions during such detention.

On the other hand, the Commission recalls that, until conviction, the accused must be presumed innocent, and the purpose of Article 5 para. 3 (Art. 5-3) of the Convention is essentially to require his provisional release once his continuing detention ceases to be reasonable (cf. Eur Court HR, Neumeister v. Austria judgment of 27 June 1969, series A no. 8, p. 37, para. 4).

In the light of its above conclusion in respect of the applicant's complaint under Article 5 para. 3 (Art. 5-3) of the

Convention, the Commission considers that no separate issue arises under Article 6 para. 2 (Art. 6-2) of the Convention in the present case.

4. The applicant further submits that his case has not been dealt with by an impartial tribunal because of the tense political climate of that time and particularly because of the murder by the mafia of the Marsala Judge for Preliminary Investigations.

He also submits that, given that the island of Pianosa has very poor connections with the mainland, particularly in case of bad weather, and is in any event very far from Sicily where the trial took place, he could not meet his defence lawyer as often as necessary during the preliminary investigations.

He alleges a breach of Article 6 paras. 1 and 3 (b) (Art. 6-1, 6-3-b) of the Convention in this respect.

The Commission observes however that in the present case the applicant was acquitted by the Palermo Court of Appeal on 16 April 1997 and that the relevant proceedings appear to be still pending.

The Commission considers therefore that the applicant cannot claim to be a victim within the meaning of Article 25 (Art. 25) of the Convention at this stage of the proceedings. This part of the application is therefore manifestly ill-founded and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECIDES TO ADJOURN the examination of the applicant's complaints concerning the alleged ill-treatment, the conditions of detention, the circumstances of his meetings with his family and the impossibility of attending Mass;

DECLARES INADMISSIBLE the remainder of the application.

H.C. KRÜGER	S. TRECHSEL
Secretary	President
to the Commission	of the Commission