AS TO THE ADMISSIBILITY OF

Application No. 23969/94
by M. M.
against Italy

The European Commission of Human Rights (First Chamber) sitting in private on 12 April 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENI_
C. BÎRSAN
K. HERNDL

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 22 May 1993 by M. M. against Italy and registered on 25 April 1994 under file No. 23969/94;

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 1964 and currently residing in Giulianello (Latina). He is a driver by profession. Before the Commission, he is represented by Mr Alessandro Montagnoli, a lawyer practising in Verona.

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

In 1985, the applicant was assigned by its employer to work as a bus driver for a school for handicapped children in Rome; his job consisted in picking the children up from home in the morning to take them to school, and in driving them home in the afternoon. He was always accompanied by a social assistant.

On 22 November 1985, the mother of R., a mentally handicapped girl born in 1964 who attended the aforementioned school, requested the intervention of a social assistant, C.T., as she suspected that R. had been raped or sodomized at school by a person named "Massimo". R. had refused to go back to school as from 11 November.

On 25 November 1985, following C.T.'s advice she took R. to the hospital to undergo a medical examination; the doctor found no recent or preceding trace of rape or sodomy.

The mother also requested that the principal of the said school, call an employee called "Massimo" to have some explanations, but the principal refused.

On that same day, the mother filed a criminal complaint against "a person named Massimo"; she reported to the Rome police that about twenty days before she had noticed that her daughter seemed to be in pain and kept going to the toilet; R. had explained this by saying to her: "It is Massimo's fault" ("é stato Massimo"). Some days later, the woman had learned from a friend of hers, C.D., that R. had told the latter that one day someone called Massimo had forced her to have a sodomizing intercourse with him in the school bathroom.

The police interrogated R. in her mother's presence; the girl said that about one month before, while she was in the school bathroom on the second floor, the applicant had told her to lie down on a small bed and had had a sexual intercourse with her.

The police then interrogated C.D., who declared that about one month before she was in the mother's apartment and had noticed that R. was very quiet; after certain hesitations, R. had confessed to her, in the presence of her sister A. and of another friend M.P., that the applicant had committed indecent acts on her, causing her pain, and had threatened her.

The police then interrogated the director of the company which was in charge of organising the school bus service to and from the school. He indicated the applicant as the relevant driver.

On 14 December 1985, the police filed a criminal complaint against the applicant with the Rome Public Prosecutor. Preliminary investigation were started.

On 29 January 1986, the Public Prosecutor called R. and her mother, as well as C.D. and C.T., to appear before her on 13 February 1986 in order to be interrogated as witnesses.

On 11 April 1986, the Public Prosecutor called the principal of the school in question to appear before her on 29 April 1986, in order to be interrogated as a witness. The principal acknowledged that the mother had reported the alleged rape to her, but argued that she did not believe that the report was plausible, because there are no beds in the bathrooms and because all children are accompanied when they go either to the toilet or to the therapy rooms on the third floor (where in fact there are beds). She added that the applicant did not enter the school and had no reason for being on the third floor, and that he had been assigned to a new job as from January 1986.

On 30 September 1986, the applicant was interrogated by the Latina Public Prosecutor in his counsel's presence. He claimed that he was innocent. He underlined that on the bus there were always at least twenty people, and that he had always met R. in the presence of the social assistant.

The applicant was eventually committed for trial before the Rome court; he was accused "of the offence provided for in Article 519 of the criminal code, in that he forced R. who is mentally handicapped to have a sexual intercourse with him. In Rome, in November 1985" ("del reato di cui all'articolo 519 c.p. per aver costretto R. malata di mente a congiungersi carnalmente con lui. In Roma, nel novembre 1985").

At the hearing of 19 May 1990, the applicant was interrogated; he claimed to be innocent, and reiterated that he had never been alone with R. because on the bus there had always been some twenty people, including the social assistant. He argued that he did not enter the school.

R. could not be interrogated, as she appeared to be very agitated; her mother was interrogated instead. She declared that she could not know the exact date of the episode, and specified that she had not reported it immediately because her father had died just those days. She alleged that the rape had happened on the third floor, in the therapy room.

C.T. was also interrogated; she declared that R's mother had contacted her on 22 November 1985 and had told her that the rape had been committed the day before.

Then C.D. was interrogated; she repeated what she had told the police, and specified that she recalled that the rape had presumably been committed on 21 November 1985.

Finally, R. was interrogated with the help of the social assistant. R. said that she had gone to the bathroom to wash her hands, and on her way back to her classroom she had been caught by the applicant who had pushed her into a room and had raped her.

The case was then adjourned to 12 June 1990, in order to interrogate two of the school caretakers. They declared that all children are accompanied to both bathrooms and therapy rooms, and that bus drivers are not allowed to enter the school.

By a judgment delivered on the same day, the Rome Court convicted the applicant of rape and sentenced him to three years' imprisonment. The court underlined that, although R. was mentally handicapped and therefore seemed not to be fully aware of her own declarations, she had been precise and detailed enough to be credible. The court held that the apparent contradictions concerning the time and the place of the rape could be easily justified by the peculiar circumstances of the case, and that in any event the witnesses against the applicant were all fully credible, whereas those on his behalf appeared to have an interest in protecting the reputation of the school.

The court found that it had been possible for the applicant to enter the school, and that it was plausible that he had in fact committed the crime; the court added that it was superfluous to know the exact place of the rape - namely the exact floor where it had been committed - once it had been established that (a) it had been committed inside the building and (b) the applicant could enter the building.

As for the timing, the court held that the rape had been committed on the day when R. had spoken to C.D., namely a couple of weeks before 25 November 1985 and immediately before 11 November 1985, date when R. had ceased to go to school, presumably as a consequence of the rape itself.

The judgment was filed with the Registry on 27 June 1990.

On 30 July 1990, the applicant appealed to the Rome court of appeal. He argued that the charge brought against him was too vague to allow him to defend himself, there being no exact indication of the place and time of the rape, and these element not having emerged during the trial. He therefore claimed that the proceedings were null and void, on the ground of a violation of his defence rights. He also requested, if the appellate court so agreed, that the evidence of a witness on his behalf, namely his employer at the time of the rape, be heard to have further details about his duties as the school bus driver.

By judgment of 30 April 1991, filed with the Registry on 20 May 1991, the court of appeal confirmed the first instance judgment. After reexamining the evidence gathered during the first instance trial and considering it unnecessary to examine the witness, the court came to the firm conclusion that the applicant was guilty. As to the alleged vagueness of the accusation, the court considered that the impossibility to indicate the exact place and time of the rape did not render the accusation itself null and void, as the elements (November 1985 - inside the school) contained in the accusation were sufficient to allow an adequate defence.

The applicant was notified of the deposit of the text of the judgment on 23 June 1992.

On 13 July 1992, the applicant filed an appeal on points of law ; he insisted in particular on the charge being too vague to allow him to defend himself, and claimed that the court of appeal had not given any grounds for refusing to examine another witness on his behalf.

By judgment of 17 June 1993, filed with the Registry on 19 July 1993, the Court of cassation rejected the applicant's appeal as being manifestly ill-founded. The Supreme Court held in particular that the charge brought against the applicant was not vague, as it contained all the details that were necessary for the applicant to defend himself. It considered that the lack of specific time and place of the rape was a consequence of the original inaccuracy of the charge ("originaria imprecisione dell'accusa") due to the mental handicap of R.; the Supreme court found however that such original inaccuracy had been remedied in the course of the trial through further corroboration, namely the statements of the three main witnesses against the applicant.

As to the refusal to hear the evidence of a witness in appeal, the Court found that the court of appeal had given reasons therefor, namely that the evidence already gathered before the Rome court was sufficient.

COMPLAINTS

1. The applicant first complains under Article 6 para. 1 of the Convention of the length of the criminal proceedings brought against him.

2. The applicant further alleges that he did not have the benefit of a fair trial.

He alleges in particular that:

- his defence rights were hindered, as the accusation brought against him was vague and inaccurate ;

- the judges incorrectly assessed the evidence before them and were thus not impartial;

- the court of appeal refused to examine a witness on his behalf.

The applicant invokes article 6 para. 3 (d).

3. The applicant finally alleges a violation of Article 5 para. 3 of the Convention.

THE LAW

1. The applicant complains of the length and fairness of the criminal proceedings instituted against him; he alleges a violation of Article 6 of the Convention, which so far as relevant provides :

"1. In the determination ... of any criminal charge against him, everyone is entitled to a fair (...) hearing within a reasonable time by a (...) tribunal (...).

3. Everyone charged with a criminal offence has the following minimum rights: (...)

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (...)

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

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 also alleges a violation of Article 5 para. 3 of the Convention.

The Commission recalls that Article 5 para. 3 of the Convention confers certain rights to persons arrested or detained prior to their conviction. However, the Commission notes that the applicant was never detained on remand.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECIDES TO ADJOURN its examination of the complaints concerning the length and fairness of the proceedings;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)