AS TO THE ADMISSIBILITY OF

Application No. 33827/96
by Giancarlo MARTINELLI and Marta POLETTI
against Italy

The European Commission of Human Rights (First Chamber) sitting in private on 9 September 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. PERENIČ
	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 5 November 1996 by Giancarlo MARTINELLI and Marta POLETTI against Italy and registered on 14 November 1996 under file No. 33827/96;

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 applicants are two Italian nationals, born in 1939 and 1941 respectively and currently residing in Mantova. They are represented before the Commission by Mr Marco Della Luna, a lawyer practising in Mantova.

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

The first applicant was the managing director and the second applicant was a partner in company X.

On 27 March 1986 company X was declared bankrupt.

The first set of proceedings:

On an unspecified date in 1986 criminal investigations were started against the applicants who were suspected of fraudulent bankruptcy.

On 3 April 1990 the applicants were committed for trial before the Court of Modena on charges of fraudulent bankruptcy.

The second applicant was tried separately. On 7 October 1995 the Court of Modena acquitted her on the ground that she had not committed the crime (per non aver commesso il fatto). This judgment became final at the latest on 21 February 1996.

The second set of proceedings:

On 25 May 1992 the Court of Modena granted the first applicant a plea-bargain (patteggiamento) provided for by article 444 of the Italian code of criminal procedure: the applicant was given a suspended sentence of one year and four months' imprisonment.

On 11 January 1994 the General Attorney attached to the Court of Appeal of Bologna appealed such decision before the Court of Cassation.

On 16 November 1994 Court of Cassation quashed the 25 May 1992 decision and sent the case back to the Court of Reggio Emilia.

By a judgment of 16 February 1996, which became final on 1 April 1996, the latter court upheld the 25 May 1992 judgment.

The third set of proceedings:

On 20 June 1991 the first applicant was questioned by the investigative police (polizia giudiziaria) on the request of the Public Prosecutor of the Court of Modena on suspicion of having committed certain fiscal offences set out in law no. 516/1982.

On 24 February 1995 the applicant was committed for trial before the Court of Modena on charges related to the above-mentioned fiscal offences.

The first hearing was held on 8 February 1996; the proceedings were then adjourned first to 4 March 1996 and then to 6 May 1996.

On the latter date the Court of Modena partially acquitted the applicant.

On 3 July 1996 the Public Prosecutor filed an appeal against the above decision with the Court of Appeal of Bologna. On an unspecified date the applicant also filed an appeal. The date of the first hearing of the appeal proceedings has not yet been set.

COMPLAINTS

1. The first applicant complains, under Article 6 para. 1, about the length of the criminal proceedings brought against him for fiscal offences before the Court of Modena.

2. The first applicant also complains about the length of the criminal proceedings brought against him for fraudulent bankruptcy before the Court of Modena.

3. The second applicant complains, under Article 6 para. 1, about the length of the criminal proceedings brought against her for fraudulent bankruptcy.

4. The second applicant further complains, under Article 6 para. 3 (a), that she has never been informed about the grounds of the charges brought against her.

THE LAW

1. The first applicant complains, under Article 6 para. 1, about the length of the criminal proceedings brought against him for fiscal offences before the Court of Modena (the third set of proceedings).

Article 6 para. 1 of the Convention, insofar as relevant, provides as follows:

"In the determination of ... any criminal charge against him, everybody is entitled to a fair ... hearing within a reasonable time ...".

The Commission notes that these proceedings seem to have started on 20 June 1991, when the applicant was questioned by the investigative police, and are currently pending before the Court of Appeal of Bologna. They have thus lasted almost seven years to date.

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

2. The first applicant also complains about the length of the criminal proceedings brought against him for fraudulent bankruptcy before the Court of Modena (the second set of proceedings).

The Commission notes that these proceedings ended on 1 April 1996 when the decision of the Court of Reggio Emilia became final. The Commission also notes that the present application was introduced on 5 November 1996, which is more that six months later. It follows that this complaint must be rejected under Article 27 of the Convention.

3. The second applicant complains, under Article 6 para. 1, about the length of the criminal proceedings brought against her for fraudulent bankruptcy (the first set of proceedings).

The Commission notes that these proceedings ended at the latest on 21 February 1996, when the applicant's acquittal by the Court of Modena became final, which is more that six months before the filing of the application with the Commission. It follows that this complaint must be rejected under Article 27 of the Convention.

4. The second applicant further complains, under Article 6 para. 3 (a), that she has never been informed about the grounds for the charges brought against her.

The invoked provision reads as follows:

"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;"

The Commission recalls that an acquitted defendant may not claim to be a victim of violations of the Convention which, according to him or her, took place in the course of the proceedings (No. 15831/89, Dec. 25.2.91, D.R. 69, p. 317).

The Commission notes that the applicant was acquitted of all charges on 7 October 1995 by the Court of Modena. Even assuming that the applicant complied with the six month time-limit set out in Article 26, the applicant cannot therefore claim to be a victim, within the meaning of Article 25 of the Convention, of a violation of Article 6 of the Convention. Her complaint is therefore manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECIDES TO ADJOURN the examination of the first applicant's complaint about the length of the criminal proceedings brought against him on charges of fiscal offences;

unanimously,

DECLARES INADMISSIBLE the remainder of the application.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber