AS TO THE ADMISSIBILITY OF

Application No. 39217/98
by Ferdinando PACELLA
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 13 August 1997 by Ferdinando PACELLA against Italy and registered on 7 January 1998 under file No. 39217/98;

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 1957 and currently residing in Bari. He is represented before the Commission by Mr Ascanio Amenduni, a lawyer practising in Bari.

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

On 18 March 1992 the judge for preliminary investigations (giudice per le indagini preliminari) attached to the Bari District Court issued a warrant of arrest against the applicant on charges of manufacturing and trafficking in drugs and belonging to a drug-trafficking association. The ground for ordering the applicant to be detained on remand was the serious circumstantial evidence against him.

On an unspecified date the Bari District Court confirmed that the applicant was to remain in detention. On 9 July 1992 the Court of Cassation upheld this decision.

On 12 August 1992 the Bari District Court ordered that the applicant should be detained at home rather than in prison due to his poor state of health.

On 3 February 1993 the applicant was released on the ground of the lack of serious evidence against him.

By a judgment which became final on 2 November 1994, the Bari District Court acquitted the applicant on the ground that he had not committed the crimes in question (per non aver commesso i fatti).

On 1 September 1995 the applicant filed a request for compensation for unfair detention with the Bari Court of Appeal.

On 2 July 1996 the latter court awarded the applicant compensation of 30,000,000 Italian lira to be paid by the Ministry of Finance.

On 18 July 1996 the applicant appealed this decision to the Court of Cassation, seeking a higher compensation.

On 19 February 1997 the Court of Cassation dismissed the appeal, with the result that the Bari Court of Appeal's decision of 2 July 1996 became final.

On 22 July 1997 the applicant, not yet having received the compensation, wrote to the Ministry of Finance asking for an explanation.

On 25 August 1997 the Ministry of Finance replied to the applicant, stating that a copy of the decision of the Court of Cassation had not been obtained until 5 June 1997, that the Ministry had had to verify whether the applicant had paid the court costs in

relation to the cassation proceedings before issuing the compensation payment order and that the Ministry had finally ordered the payment on 6 August 1997.

On 2 September 1997 the applicant received the amount he had been awarded in compensation. No interest was included in the sum received by the applicant.

COMPLAINTS

1. The applicant complains that he was not paid interest for the six-month delay in the payment of the compensation he was entitled to pursuant to the decision of the Bari Court of Appeal.

2. The applicant further complains, under Article 5 para. 5 of the Convention, about the amount of the compensation he received for his unfair detention.

3. The applicant finally complains, under Article 6 para. 1, about the length of the compensation proceedings.

THE LAW

1. The applicant complains that he was not paid interest for the delay in the payment of the compensation he was entitled to.

The Commission first notes that the applicant was entitled to receive a 30,000,000 Italian lira compensation for unfair detention pursuant to the decision of the Bari Court of Appeal of 2 July 1996.

The Commission recalls that a debt can constitute a "possession" for the creditor (No. 15488/89, Dec. 27.2.95, D.R. 80-B, p. 14). The Commission therefore considers that this complaint falls to be examined under Article 1 of Protocol No. 1 to the Convention which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission first recalls that, according to the Court's case-law, Article 1 of Protocol No. 1 comprises three distinct rules. The first, which is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule covers deprivation of possession and subjects it to certain conditions. The third recognises that the

Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule (see, inter alia, Eur. Court HR, Pressos Compania Naviera S.A. and Others v. Belgium judgment of 20 November 1995, Series A no. 332, p. 21, para. 33; Eur. Court HR, Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, p. 24, para. 61).

The Commission considers that, in the circumstances of the present case, where no issues of deprivation of possessions nor of State's control of the use of property arise, the applicant's complaint falls within the first rule laid down by the first sentence of Article 1 of Protocol No. 1.

The Commission recalls that, for the purpose of the latter provision, it must be determined whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (Eur. Court HR, Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, p. 24, para. 69).

In this respect, the Commission notes that the circumstances of the present case differ from the case where an individual is entitled to a tax credit of a fixed amount (see the above-cited No. 15488/89, Dec. 27.2.95, D.R. 80-B, p. 14). By contrast, in the present case, the court exercised its discretion in determining the amount of the compensation to be awarded to the applicant.

The Commission also notes that there was a delay of five months and seventeen days between 19 February 1997, when the decision of the Bari Court of Appeal granting the applicant compensation for unfair detention became final, and 6 August 1997, when the Ministry of Finance issued the order to pay the compensation.

The Commission considers that, although no interest for this delay has been paid, a six-month period for a public administration to issue a payment order, also in consideration of the various bureaucratic fulfilments to be accomplished, cannot be regarded as disproportionate.

The Commission considers that, in the present case, where the court exercised its discretion in determining the amount of the compensation to be awarded to the applicant, a six-month delay is not so excessive as to infringe the "fair balance" requirement within the meaning of the first sentence of Article 1 of Protocol No. 1 to the Convention.

The Commission accordingly concludes that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2.

2. The applicant further complains, under Article 5 para. 5 of the Convention, about the amount of the compensation he received for his unfair detention.

Article 5 para. 5 of the Convention reads as follows:

"Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation".

The Commission recalls that the right to compensation under Article 5 para. 5 presupposes that a violation of one of the other paragraphs of Article 5 has been established, either by a domestic authority or by the Convention organs (No. 10801/84, Dec. 3.10.88, D.R. 61, p. 62; No. 7950/77, Dec. 4.3.80, D.R. 19, p. 213).

The Commission first notes that in the present case no breach of Article 5 paras. 1 to 4 has been established by any domestic organ, including the Bari Court of Appeal, since the only ground for awarding the applicant compensation for the unfair detention was his subsequent acquittal. As far as the Convention organs are concerned, the Commission first notes that the applicant has not raised before it any complaint in relation to the provisions of Article 5 paras. 1 to 4. The Commission also notes, however, that, even assuming that the applicant had done so, such a complaint would be considered as introduced out of time. The final decision on the applicant's detention on remand was the order to release him which was made on 3 February 1993, whereas the present application was introduced on 13 August 1997, which is more than six months later.

The Commission accordingly concludes that Article 5 para. 5 does not apply to the present case. This part of the application is thus manifestly ill-founded within the meaning of Article 27 para. 2.

3. The applicant finally complains, under Article 6 para. 1, about the length of the compensation proceedings.

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

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time ...".

The Commission notes that the proceedings in question started on 1 September 1995, when the applicant filed a request for compensation for unfair detention with the Bari Court of Appeal, and ended on 19 February 1997 when, following the Court of Cassation's dismissal of the applicant's appeal, the Bari Court of Appeal decision of 2 July 1996 became final. The overall length of the proceedings was, therefore, one year, five months and 18 days.

Even assuming that Article 6 para. 1 applies to the proceedings in question (see Eur. Court HR, Georgiadis v. Greece judgment of 29 May 1997, Reports of Judgments and Decisions 1997-III, pp. 958 and 959, paras. 27-36, and, a contrario, Eur. Court HR, Masson and Van Zon v. the Netherlands judgment of 28 September 1995, Series A no. 327-A, pp. 17-20, paras. 44-52), the Commission, in the light of its case-law on Article 6

para. 1, considers that a length of about one year and five months cannot be regarded as excessive (see, for example, mutatis mutandis, No. 27770/95, Dec. 18.10.95, unpublished; No. 29151/95, Dec. 26.6.96, unpublished).

Therefore this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 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