AS TO THE ADMISSIBILITY OF

Application No. 24238/94
by Gianfranco PIAZZI
against Italy

The European Commission of Human Rights (First Chamber) sitting in private on 27 November 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ

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 18 December 1993 by Gianfranco PIAZZI against Italy and registered on 31 May 1994 under file No. 24238/94;

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 1953 in Ferrara, artisan by profession. He is currently detained in Bologna.

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

On 4 February 1989 the Venice Investigating Judge issued a warrant of arrest against the applicant and seventeen coaccused, on charges of:

- importing significant quantities of cocaine (five and eight kilograms) from Colombia to Ferrara on several occasions between 1984 and 1986,

- selling significant quantities of cocaine to D.Z. in Ferrara on several occasions between 1984 and 1986,

- importing three kilograms of cocaine from Columbia on 24 May 1986 through F.G. (the latter had already been finally convicted of this charge by the Milan Court),

- belonging to a criminal association of more than three people with a view to trafficking cocaine from Colombia, and

- belonging to a criminal association of more than ten people with a view to trafficking cocaine from abroad, in Ferrara, Venezia, Rome and Milan between 1983 and 1988 (the applicant and six coaccused being the heads of the association and the financiers).

The warrant of arrest included three pages of grounds for the arrest; reference was made to Articles 71, 74 section 1 no. 2, 74 section 2, and 75 of Law of 22 December 1975 no. 685, articles 81 and 110 of the criminal code.

On 9 February 1989, the applicant was arrested by the police and was notified of the warrant of arrest.

In February 1989, the Bologna Public Prosecutor's Office arrested F.F., who accused certain alleged accomplices of his, including the applicant.

The applicant filed with the Ferrara Investigating Judge a request to be released on the ground that the evidence against him was not sufficient ("per insufficienza di indizi").

On 24 August 1989 the Investigating Judge dismissed the applicant's request. Following the applicant's appeal against this decision, in a decision of 12 October 1989 the Ferrara Court ("Tribunale della libertà") considered that, with the exception of charge (5), there was not enough evidence against the applicant, who was thus released from prison the same day.

In January 1990 the Bologna police proceeded to the arrest of several coaccused including the applicant.

In February 1990 the two preliminary investigations pending in Ferrara and in Bologna were joined before the Bologna Public Prosecutor's Office.

On 1 October 1990 the applicant was committed for trial before the Bologna Court together with 107 coaccused, on the charges of:

(1) illegally buying and keeping fifty grams of cocaine in Anzola and Ferrara in winter 1986;

(2) importing significant quantities of cocaine (five and eight kilograms) from Colombia to Ferrara and other unidentified places on several occasions between 1984 and 1986, and acting in a group of more than three people, thus belonging to a criminal association;

(3) selling quantities of cocaine to D.Z. in Ferrara on several occasions between 1984 and 1986;

(4) importing three kilograms of cocaine from Columbia to Milan Linate airport in Italy on 24 May 1986 through F.G. (the latter having already been finally convicted of this charge by the Milan Court), acting in a group of more than three people, thus belonging to a criminal association;

(5) buying, keeping, transporting and importing significant quantities of cocaine to Italy from Columbia, acting in a group of more than three people together with other unidentified persons all belonging to a criminal association, in Ferrara and other unidentified places between 1986 and 1988; and

(6) belonging to a criminal association of more than ten people with

a view to trafficking cocaine from abroad, in Ferrara, Venezia, Rome, Milan, Savona and other unidentified places between 1983 and 1988 (the applicant and six coaccused being the heads of the association and the financiers).

Reference was made to Articles 71, 74 section 1 no. 2, 74 section 2, and 75 of Law of 22 December 1975 no. 685, articles 81 and 110 of the criminal code.

The applicant was interrogated at the hearing of 21 March 1991.

By a judgment of 17 June 1991 the Bologna Court found the applicant guilty of charge (2) - charges (4), (5) and (6) being included in this charge - and acquitted him of charges (1) and (3); it sentenced him to eleven years' imprisonment and to a fine. Twenty-four pages of the judgment described the evidence against the applicant, the assessment of such evidence by the Court and the grounds for the applicant's conviction. The evidence against the applicant was mainly formed by statements made by F.F., numerous statements made by eight coaccused - in particular O.M. and P.T. - and witnesses, documents concerning the arrest of F.G., documents supplied by the German police and concerning a coaccused arrested in Germany, and a diary seized from the applicant's cohabiting partner.

On 29 November 1991 the applicant lodged an appeal against this judgment before the Bologna Court of Appeal. He claimed that the judgment was a nullity as it had been issued by an incompetent judge, that he had not been notified of the warrant of arrest and that the judicial authorities of Bologna were not territorially competent. As to the substance, he challenged the credibility of G.F. and of his coaccused O.M., pointing out certain of G.F.'s contradictions and the lack of corroboration. He finally requested a reduction in the sentence. The applicant later filed further grounds for the appeal, mainly challenging the assessment of evidence by the lower courts.

By a judgment of 10 June 1992, the Bologna Court of Appeal dismissed the applicant's allegations concerning the nullity of the procedure; it reexamined F.F.'s statements and came to the conclusion that they were corroborated by the statements of the applicant's coaccused O.M. and by several other statements of other coaccused, in particular P.T., and by the diary seized from the applicant's cohabiting partner. It subsequently confirmed the applicant's conviction but reduced the sentence to 10 years and four months' imprisonment.

On 6 February 1993 the applicant lodged an appeal on points of law against this judgment, reiterating that the procedure was null and void, and that there was no corroboration to F.F.'s and O.M.'s statements, and that P.T.'s statements were not reliable.

By judgment of 20 May 1993, filed in the Registry on 23 August 1993, the applicant's appeal on points of law was dismissed by the Court of Cassation.

COMPLAINTS

1. The applicant complains of his conviction and sentence and claims that he has been denied a fair trial and in particular that the judges incorrectly assessed the evidence before them as they trusted the statements of certain of his former accomplices who were not reliable.

He further maintains that he was convicted of importing cocaine to Frankfurt together with four people on account of charge (5), whereas this charge was clearly different from the facts of which he was convicted and that the charge of belonging to a criminal association (charge 6) was too vague to allow him to defend himself:

he therefore maintains that he was not informed in detail of the accusations brought against him.

He alleges a violation of Article 6 paras. 1 and 3 (a) of the Convention in these respects.

2. The applicant complains of the length of the criminal proceedings brought against him, during which he was kept in detention. He invokes Article 5 para. 3 of the Convention.

THE LAW

1. The applicant complains in the first place of his conviction and sentence.

The Commission first recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers to its established case-law (cf., e.g., No. 13926/88, Dec. 4.10.90, D.R. 66 pp. 209, 225; No. 21283/93, Dec. 5.4.94, D.R. 77-A pp. 81, 82 and 88).

It is true that in the present case the applicant complains also that he was denied a fair hearing and in particular that the judges incorrectly assessed the evidence before them, that he was convicted of a charge which was different from the one of which he had been informed and that the charge of belonging to a criminal association was too vague to allow him to defend himself.

Article 6 (Art. 6), in so far as relevant, reads:

"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; (...)

Even assuming that the applicant, in accordance with Article 26 (Art. 26) of the Convention, has complied with the condition as to the exhaustion of domestic remedies, namely that he had raised his complaints either in form or in substance before the Court of Appeal and the Court of Cassation, the Commission considers that this part of the application is inadmissible for the following reasons.

The Commission recalls that the requirements of paragraph 3 of Article 6 (Art. 6-3) represent particular aspects of the right to a fair trial guaranteed in paragraph 1. It will therefore examine the complaints from the point of view of these two provisions taken together (see Eur. Court H. R., Lüdi v. Switzerland judgment of 15 June 1992, Series A, no. 238, p. 23, para. 43).

a) The applicant submits that charge (5) did not correspond to the charge of which he was convicted and that charge (6) was vague and inaccurate. He thus maintains that he was not informed in detail about the accusations brought against him.

The Commission and the Court have stressed that Article 6 para. 3 (a) (Art. 6-3-a) of the Convention is of fundamental importance

in preparing the defence and that its scope must be understood in relation to Article 6 para. 3 (b) (Art. 6-3-b) , which guarantees to everyone the right to have adequate time and facilities for the preparation of his defence and in the light of the more general right to a fair trial secured by Article 6 para. 1 (Art. 6-1) of the Convention (cf. Gea Catalan v. Spain, Comm. Report 30.11.93, para. 28, to be published in Eur Court H.R., Series A no. 309).

The Commission recalls that pursuant to Article 6 para. 3 (a) (Art. 6-3-a) of the Convention, the accused is entitled to be informed of the cause of the accusation, i.e. the material facts alleged against him which are at the basis of the accusation, and of the nature of the accusation, i.e. the legal qualification of these material facts. The "detailed" information referred to in this provision should contain the material enabling the accused to prepare his defence, without however necessarily mentioning the evidence on which the charges are based (No. 7628/76, Dec. 9.5.77, D.R. 9 p. 173).

In the present case, the Commission observes in the first place that the two charges contained in the applicant's warrant of arrest and subsequently in the applicant's committal for trial [charges (5) and (6)], and about which the applicant complains, described - although at times not in detail: "other unidentified places" and "together with other unidentified persons" - the relevant periods of time and the places where they had supposedly taken place as well as the alleged accomplices. Reference was made to Articles 71, 74 section 1 no. 2, 74 section 2, and 75 of Law of 22 December 1975 no. 685, articles 81 and 110 of the criminal code, and the legal qualification of the facts was clearly indicated. The Commission further observes that in the course of the proceedings further elements were added to the accusation; these elements were brought to the applicant's knowledge and he had the opportunity of disputing them and defending himself from the accusation as it developed.

In any event, the Commission notes that the applicant was convicted of charge (2) only, the two charges at issue having been considered as "included" in charge (2); the Commission therefore considers that the applicant cannot claim to be a victim of a violation of the Convention in this respect.

b) The applicant further submits that the assessment of evidence made by the various judges was arbitrary and erroneous, and in particular that the former accomplices of his who accused him were not reliable.

The Commission recalls that the question of the admissibility of evidence and of its probative value is primarily governed by the rules of domestic law, and as a general rule it is for the national courts and in particular the courts of first instance, to assess the evidence before them, as well as the evidence which the accused seeks to adduce (see Eur. Court H. R., Edwards v. United Kingdom judgment of 16 December 1992, Series A no. 247-B, pp. 34-35, para. 34; Windisch v. Austria judgment of 27 September 1990, Series A no. 186, p. 10, para. 25).

The Commission's task in the present case is therefore not to express a view as to whether the evidence against the applicant was correctly admitted and assessed by the judges, but rather to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (see, Eur. Court H.R., Saïdi v. France judgment of 20 September 1993, Series A no. 261-C, p. 56, para. 43).

The Commission points out that the use at the trial of evidence obtained from an accomplice by granting him a reduction of sentence may put in question the fairness of the hearing granted to an accused person, and thus raise an issue under Article 6 para. 1

(Art. 6-1) of the Convention (No. 7306/75, Dec. 6.10.76, D.R. 7, p. 115).

However, the Commission notes that in the present case the applicant had the opportunity, through his lawyer, to challenge his former accomplices' statements, thus providing the judges with all information which was capable of casting doubt on their credibility. Moreover the Italian courts had examined the evidence before them thoroughly, and had come to the conclusion that the statements made by F.F., O.M. and P.T. were convincing and corroborated by other evidence, namely by numerous statements of the applicant's other accomplices, but also by certain documents gathered during the preliminary investigations.

The Court of Cassation analysed thoroughly and in detail all of the applicant's complaints, addressing the issue of the assessment of evidence by the lower courts and concluding that the latter had not overstepped the limits of appreciation of evidence or established facts in an arbitrary manner.

The Commission does not find these conclusions arbitrary or otherwise unfair.

In conclusion, the Commission considers that the proceedings as a whole do not disclose that the applicant was deprived of a fair hearing within the meaning of Article 6 (Art. 6) of the Convention, in respect of the administration of evidence or in any other aspect.

It follows that the application in this respect is manifestly ill-founded and must be rejected in pursuance of Article 27 para. 2 (Art. 27-2) of the Convention.

c) The applicant also alleges that the proceedings were unreasonably long.

The Commission considers that this complaint falls to be examined under Article 6 para. 1 (Art. 6-1) of the Convention.

The period to take into consideration began on 9 February 1989 when the applicant was arrested (see Eur. Court HR, Wemhoff v. Germany judgment of 27 June 1968, Series A no. 7, p. 26, para. 9) and ended on 23 August 1993, when the final judgment was deposited in the Registry. The overall length is therefore four years, six months and fourteen days.

The Commission recalls that:

> "The reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities (...)" (Eur. Court H.R., Kemmache v. France judgment of 27 November 1991, Series A no. 218, p. 27, para. 60).

The Commission considers that the proceedings at issue were undoubtedly complex, regard being had in particular to the number of coaccused and the number and nature of the charges and, insofar as the appeal proceedings are concerned, the number and nature of the grounds for appeal.

The Commission considers that the proceedings in question, having lasted four years, six months and fourteen days, having regard to the complexity of the case and also to the fact that there were three degrees of jurisdiction, are not sufficiently long to conclude that the "reasonable time" referred to in Article 6 para. 1 (Art. 6-1) of the Convention has been exceeded in the present case (see No. 22717/93, Dec. 28.6.95, unpublished).

It follows that this part of the application is also manifestly ill-founded and must be rejected in pursuance of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant finally complains under Article 5 para. 3 (Art. 5-3) of the Convention that he was detained throughout the period of the proceedings brought against him.

Article 5 (Art. 5) of the Convention, in so far as relevant, provides 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:
>
> a. the lawful detention of a person following conviction by a competent court;
>
> (...)
>
> 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.
>
> (...)
>
> 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 to guarantees to appear for trial."

(a) In so far as the applicant's detention prior to his conviction and sentence by the Bologna Court judgment of 10 June 1991 is concerned, the Commission is not required to decide whether or not this part of the complaint discloses any appearance of a violation of the Convention, as it is inadmissible for the following reasons.

The Commission recalls that, pursuant to Article 26 (Art. 26) of the Convention, it can only deal with a matter within a period of six months from the date in which the final decision was taken.

It notes that the applicant's detention on remand ended on 10 June 1991 with his conviction by the Bologna Court, which is more than six months before the date when the present application was filed with the Commission.

It follows that this part of the complaint has been lodged out of time and must be rejected pursuant to Article 27 para. 3 (Art. 27-3) of the Convention.

(b) In so far as the applicant's detention after 10 June 1991 is concerned, the Commission recalls that Article 5 para. 3 (Art. 5-3) of the Convention relates exclusively to the detention referred to in the first paragraph under (c), i.e. detention on remand.

It further observes that by judgment of the Bologna Court on this date, the applicant was convicted of drug trafficking and sentenced to 11 years of imprisonment; therefore, after this date even if the applicant continued to be considered as a remand prisoner under domestic law, for the purposes of Article 5 para. 3 (Art. 5-3) of the Convention his detention comes under Article 5 para. 1 (a) (Art. 5-1-a), which authorises the lawful detention of a person after

conviction by a competent court (cf. Eur Court H.R., Wemhoff v. Germany judgment of 27 June 1968, Series A no. 7, p. 23, para. 9; No. 20253/92, G.P. v. Italy, Dec. 6.4.95, unpublished).

It follows that the remainder of the complaint is manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO	J. LIDDY
Secretary	President
to the First Chamber	of the First Chamber