CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 41852/98
by Antonino VACCARO
against Italy

The European Court of Human Rights (Second Section) sitting on 14 October 1999 as a Chamber composed of

Mr C. Rozakis, *President*,
Mr M. Fischbach,
Mr B. Conforti,
Mr P. Lorenzen,
Mrs M. Tsatsa-Nikolovska,
Mr A.B. Baka,
Mr E. Levits, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 24 March 1998 by Antonino Vaccaro against Italy and registered on 23 June 1998 under file no. 41852/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 5 March 1999 and the observations in reply submitted by the applicant on 20 April 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Italian national, born in 1944, and currently imprisoned in Solliciano (Florence). He is represented before the Court by Mr Danilo Ammannato, a lawyer practising in Florence.

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

The applicant's detention on remand and his committal for trial

The applicant was imprisoned on 30 September 1993 further to an order issued on 24 September 1993 by the preliminary investigations judge ("*giudice per le indagini preliminari*") attached to the Florence District Court. The applicant was accused of belonging to a Mafia type association, drug-trafficking, unlawful possession of arms and forgery. The accusation was based on the statements of a certain Mr M., a *pentito* (a *mafioso* who had decided to co-operate with the authorities).

In the reasons for the order of 24 September 1993, the preliminary investigations judge found that M.'s statements should be considered credible and to have been made voluntarily. They could therefore constitute strong evidence of guilt ("*gravi indizi di colpevolezza*"), which is a prerequisite under Italian law for remanding an accused in custody. The judge also considered that these statements were corroborated by the results of criminal investigations concerning similar crimes, as well as by statements made by other *pentiti*. Furthermore, pursuant to section 275 of the Code of Criminal Procedure ("*Codice di Procedura Penale*", hereinafter called the "CPP"), the nature and the seriousness of the offences raised the rebuttable presumption that the conditions for remand in custody laid down in section 274 (risk of tampering with evidence, of absconding and of re-offending) applied.

On 24 March 1995, the preliminary investigations judge committed the applicant and twenty-six other persons for trial before the Florence District Court.

In a judgment of 8 February 1996, the Florence District Court, acting in accordance with section 23 of the CPP (which provided that the judge who found himself incompetent *ratione loci* should forward the case-file to the competent judge), declared that the case was outside its territorial jurisdiction and ordered that the case-file be transmitted to the Grosseto District Court.

In an order of 25 March 1996, the Grosseto District Court confirmed the applicant's detention on remand.

In an order of 28 March 1996, the President of the Grosseto District Court committed the accused for trial and scheduled the date of the first hearing for 7 May 1996.

In an order of 25 July 1996, the Grosseto District Court granted the prosecution's request to suspend the maximum periods of detention on remand for the duration of the trial and deliberations at first instance, pursuant to section 304(2) CPP. It considered that, given the fact that more than three hundred witnesses had to be examined and a considerable volume of documents, including a number of experts' opinions, had to be produced, the proceedings could be regarded as being particularly complex. In the reasons for that order, the District Court

specified that, according to the Court of Cassation's well-established case-law, the suspension should cover the whole duration of the trial and not only the days of the actual hearings.

On 21 November 1996, the applicant lodged an application for immediate release with the District Court. He observed that the interpretation followed in the order of 25 July 1996 - according to which the suspension of the maximum periods of detention on remand should cover periods of inactivity between hearings - was inconsistent with the relevant provisions of the CPP, with the overall purpose of Article 5 § 3 of the Convention and with Articles 3, 13 § 5 and 24 of the Italian Constitution.

In an order of 3 December 1996, the Grosseto District Court, observing that the maximum periods of detention on remand had not been overstepped, dismissed the applicant's claim.

On 18 December 1996, the applicant appealed against that order. The Florence District Court, sitting as the authority with jurisdiction to decide on measures affecting the liberty of persons ("*tribunale della libertà e del riesame*"), dismissed the applicant's appeal in an order of 15 January 1997.

On 7 February 1997, the applicant appealed on points of law.

In a decision of 17 June 1997, the Court of Cassation, considering that the lower court had not duly indicated the specific and concrete grounds for the decision to suspend the maximum periods of detention on remand, annulled the impugned order and referred the case back to the Florence District Court.

In a decision of 27 October 1997, filed with the registry on 7 November 1997, the Florence District Court confirmed the Grosseto District Court's order of 3 December 1996 and declared that the doubts raised by the applicant as to the constitutionality of the relevant provisions of the CPP were manifestly ill-founded. The District Court observed that the length of the proceedings was mainly due to the complexity of the case, to the number of parties and witnesses as well as to the circumstances preventing the attendance of the accused's lawyers and of the District Court's judges. Furthermore, no significant periods of inactivity seemed to have occurred during the trial, given the fact that at least fifty hearings had taken place from 25 June until December 1996. However, the court noted that some hearings had been adjourned for reasons which were not imputable to the applicant or to the requirements of the fair administration of justice in criminal cases, such as lawyers' strikes, the Public Prosecutor's illness and a lack of a proper hearing-room. It consequently considered that a global delay of thirty-one days should be deducted from the maximum period of detention on remand, which had not been overstepped, even taking into account such deduction.

On 24 November 1997, the applicant appealed on points of law against that decision. In a decision of 18 February 1998, filed with the registry on 19 March 1998, the Court of Cassation declared the applicant's appeal inadmissible as manifestly ill-founded.

The first-instance trial before the Grosseto District Court

In the meanwhile, one hundred and thirty-eight trial hearings had taken place before the Grosseto District Court. About three hundreds witnesses had been heard and a number of expert opinions were examined.

During the trial, the lawyers of the accused had contested the lawfulness of the order for committal for trial. They had noted that in a judgment of 15 March 1996, the Constitutional Court had declared that section 23 of the CPP was unconstitutional and that the incompetent judge should forward the case-file to the Public Prosecutor's Office (and not to the competent judge, as previously provided). Given the fact that in its judgment of 8 February 1996 the Florence District Court had ordered that the case-file be transmitted to the Grosseto District Court, the lawyers had requested that the whole proceedings be declared null and void.

On 22 July 1997, the applicant's lawyer had declared that due to family reasons, he was unable to take part in the hearings scheduled in August and had requested to adjourn the case until 1 September 1997.

In a judgment of 16 December 1997, the Grosseto District Court had sentenced the applicant to eleven years and six months' imprisonment for drug-trafficking and had acquitted him in respect of the remainder of the charges. The court had also ordered that the applicant's case-file be transmitted to the Public Prosecutor's Office in order to evaluate the desirability of instituting fresh proceedings against him for belonging to a Mafia type association and drug-trafficking, crimes which appeared to have been committed in Florence.

As concerned the question of the lawfulness of the order for committal for trial, the District Court had observed that the decision of the Florence District Court had been adopted on 8 February 1996, while the invoked judgment of the Constitutional Court had been published only on 20 March 1996. Therefore, in accordance with the principle *tempus regit actum*, the finding of the unconstitutionality of section 23 of the CPP could not retroactively affect the lawfulness of the Florence District Court's judgment.

The appeal proceedings

The applicant lodged an appeal with the Florence Court of Appeal.

In a judgment of 17 November 1998, filed with the registry on 27 November 1998, the Court of Appeal declared that the committal for trial and the first-instance judgment were null and void and ordered that the case-file be transmitted to the Florence Public Prosecutor's Office. It observed, in particular, that the finding that a provision was unconstitutional should in principle apply to all pending proceedings. Therefore, after the Constitutional Court's judgment of 15 March 1996, the District Court had no power to commit the accused for trial and its President's order of 28 March 1996 as well as all the acts done before it were invalid.

According to the information provided by the applicant on 19 April 1999, at that date he was still detained awaiting the renewal of the first-instance trial.

COMPLAINT

Invoking Article 5 § 3 of the Convention, the applicant complains about the length of his detention on remand.

PROCEDURE

The application was introduced before the European Commission of Human Rights on 24 March 1998 and registered on 23 June 1998.

On 22 October 1998, the Commission (First Chamber) decided to give notice of the application to the respondent Government, and invited them to submit their observations on its admissibility and merits.

By virtue of Article 5 § 2 of Protocol No. 11 to the Convention, which entered into force on 1 November 1998, the application is thereafter to be examined by the European Court of Human Rights.

The Government submitted their observations on 5 March 1999, to which the applicant replied on 20 April 1999.

THE LAW

The applicant complains about the length of his detention on remand. He invokes Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

> "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..."

The Government observe that the decisions ordering the suspension of the maximum periods of detention on remand were justified by the complexity of the case and the number of the accused persons. They point out that one hundred and thirty-eight hearings took place before the Grosseto District Court, that there were no long periods of stand-still during the trial and that the competent authorities showed a particular diligence in dealing with the matter. Moreover, on 22 July 1997 the applicant's lawyer himself requested an adjournment - thus showing little interest in a prompt termination of the proceedings - and all the lawyers of the accused agreed on the adjournments of the dates of the hearings. The Government furthermore note that there was strong evidence of guilt against the applicant, who was charged with very serious offences and could be considered as a socially dangerous person.

The applicant considers that the interpretation followed by the national courts - according to which the suspension of the maximum periods of detention on remand should cover periods of inactivity between hearings - is inconsistent with the relevant provisions of the CPP and violates Article 5 § 3 of the Convention. He observes that at first instance he was acquitted from the charges of belonging to a Mafia type association and unlawful detention of arms and points out that the whole trial has been declared null and void by the Florence Court of Appeal.

The Court notes that the applicant was arrested on 30 September 1993 and was deprived of his liberty until 16 December 1997, when the Grosseto District Court sentenced him to eleven years and six months' imprisonment. This first period of detention on remand lasted four years, two months and sixteen days. From 16 December 1997 until 17 November 1998, the applicant's deprivation of liberty was based on Article 5 § 1 a) of the Convention as "the lawful detention of a person after conviction by a competent court" and cannot therefore

be taken into account for the purposes of Article 5 § 3 of the Convention, a provision which only concerns the length of detention within the meaning of Article 5 § 1 c) (see, for instance, the B. v. Austria judgment of 28 March 1990, Series A no. 175, p. 14, § 36).

However, on 17 November 1998 the Florence Court of Appeal quashed the first-instance judgment and ordered the renewal of the trial. From that date, the applicant was again deprived of his liberty according to Article 5 § 1 c) of the Convention. This second period of detention on remand lasted at least until 19 April 1999, which is to say five months and two days.

The Court has examined the parties' submissions. In the light of all the material in its possession, it considers that the application raises complex issues of law and of fact, the determination of which should depend on an examination of the merits. The Court finds, therefore, that the application is not manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, unanimously, the Court

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Erik Fribergh
Registrar

Christos Rozakis
President