CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

COURT (CHAMBER)

CASE OF ARTICO v. ITALY

(Application no. 6694/74)

JUDGMENT

STRASBOURG

13 May 1980

In the Artico case,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr. G. WIARDA, President,
Mr. G. BALLADORE PALLIERI,
Mr. M. ZEKIA,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. L. LIESCH,
Mr. F. GÖLCÜKLÜ,
Mr. J. PINHEIRO FARINHA,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in privated on 1 February and 30 April 1980,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The Artico case was referred to the Court by the European Commission of Human Rights ("the Commission"). The case originated in an application against the Republic of Italy lodged with the Commission on 26 April 1974 under Article 25 (art. 25) of the Convention by an Italian national, Mr. Ettore Artico.

2. The Commission's request, to which was attached the report provided for under Article 31 (art. 31) of the Convention, was lodged with the registry on 11 May 1979, within the period of three months laid down by Articles 32 par. 1 and 47 (art. 32-1, art. 47). The request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration made by the Republic of Italy recognising the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the Commission's request is to obtain a decision from the Court as to whether or not the facts of the case disclose a breach by the respondent State of its obligations under Article 6 par. 3 (c) (art. 6-3-c).

3. The Chamber of seven judges to be constituted included, as ex officio members, Mr. G. Balladore Pallieri, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the Vice-President of the Court (Rule 21 par. 3 (b) of the Rules of Court). On 17 May 1979, the Vice-President drew by lot, at the request of the President and in the presence of the Deputy Registrar, the names of the five other members, namely Mr. M. Zekia, Mrs. D. Bindschedler-Robert, Mr. L. Liesch, Mr. F.

Gölcüklü and Mr. J. Pinheiro Farinha (Article 43 in fine of the Convention and Rule 21 par. 4) (art. 43).

4. Mr. Wiarda assumed the office of President of the Chamber (Rule 21 par. 5). He ascertained, through the Deputy Registrar, the views of the Agent of the Government of Italy ("the Government") and the Delegates of the Commission regarding the procedure to be followed. On 6 June 1979, he decided that the Agent should have until 7 November 1979 to file a memorial and that the Delegates should be entitled to file a memorial in reply within two months from the date of the transmission of the Government's memorial to them by the Registrar.

The official French text of the Government's memorial was not received at the registry until 11 December 1979. On 17 December, the Secretary to the Commission advised the Registrar that the Delegates would present their observations at the hearings.

5. After consulting, through the Registrar, the Agent of the Government and the Delegates of the Commission, the President directed on 18 December that the oral hearings should open on 31 January 1980.

6. The oral hearings were held in public at the Human Rights Building, Strasbourg, on 31 January. Immediately before their opening, the Chamber had held a short preparatory meeting; it had authorised the representative of the Government and the person assisting the Commission's Delegates to use the Italian language (Rule 27 par. 2 and 3).

There appeared before the Court:

- for the Government:

Mr. M. IMPONENTE, State Counsel
(avvocato dello Stato), *Agent's Delegate*;

- for the Commission:

Mr. S. TRECHSEL, *Principal Delegate*,
Mr. M. MELCHIOR, *Delegate*,
Mr. P. SOLINAS, the applicant's lawyer
before the Commission, assisting the Delegates under
Rule 29 par. 1, second sentence, of the Rules of Court.

The Court heard addresses by those appearing and their replies to its questions. It requested them to produce several documents; the majority of these, and some other documents, were supplied on 31 January by the Commission and on 20 March by the Government.

7. On 11 February 1980, the Registrar, acting on the Court's instructions, made a written request to the Commission for a further item of information. The Secretary to the Commission replied thereto on 12 March.

AS TO THE FACTS

1. Particular facts of the case

(a) The applicant's convictions and appeals

8. Mr. Ettore Artico, an Italian citizen born in 1917, is an accountant by profession.

On 27 January 1965, Mr. Artico was sentenced by the Verona District Judge (pretore) to eighteen months' imprisonment and a fine for simple fraud (truffa semplice). A further sentence of eleven months' imprisonment and a fine for repeated fraud (truffa con recidiva), impersonation (sostituzione di persona) and uttering worthless cheques was imposed on him by that Judge on 6 October 1970. These various offences had been committed in May/June 1964. Appeals lodged by the applicant on 28 January 1965 and 11 December 1970 were rejected on 16 December 1969 and 17 April 1971, respectively, by the Verona Criminal Court; it dealt with both cases in Mr. Artico's absence.

On 11 October and 13 November 1971, the pretore issued committal warrants to enforce the two prison sentences. The warrants were served on the applicant on 22 December 1971; he had, in fact, been arrested on 8 December in connection with other offences.

9. On 25/26 December 1971, Mr. Artico, who was then in Brindisi prison, appealed once more to the Criminal Court against both of the decisions of the pretore. He claimed to be unaware of the Criminal Court's judgments and accordingly filed with the appeals applications to quash (ricorsi per cassazione), inter alia, "any decision given on appeal" ("la eventuale sentenza di secondo grado"). The fact that the cases had been dealt with in Mr. Artico's absence was the basic target of these applications: they challenged in particular the regularity of both the procedure followed as regards the service of various documents and declarations to the effect that the applicant was untraceable (decreto di irreperibilità; Article 170 of the Code of Criminal Procedure).

By two Orders of 6 March 1972, the Criminal Court declared the appeals inadmissible on the ground that they were directed against decisions that had already been the subject of appeals. At the same time, the Criminal Court, for reasons of jurisdiction, transmitted the applications to quash to the Court of Cassation.

10. On 10 and 14/15 March, Mr. Artico, who was then in Venice prison, filed declarations with the latter Court setting out his further arguments. Although this was not mentioned amongst the principal grounds invoked, the declarations concluded with a new request: the offences covered by the decisions of the pretore should be declared to have been extinguished as a result of statutory limitation (prescrizione; Articles 157 et seq. of the

Criminal Code) in November/December 1971, since by that date the statutory period of seven years and six months had elapsed.

In pleadings dated 3 and 10 July 1973, which dealt only with the alleged procedural irregularity and not with the issue of statutory limitation, the public prosecutor (pubblico ministero) submitted that Mr. Artico's applications were manifestly ill-founded.

By two Orders (ordinanze) of 12 November 1973, the Court of Cassation, sitting in chambers, declared the applications inadmissible on the ground that there had been no procedural irregularity; it dit not, however, advert to the question of statutory limitation.

11. During 1975, Mr. Artico, relying once more on the issue of statutory limitation, filed with the Court of Cassation an appeal (istanza di revisione) against the decisions of 27 January 1965 and 6 October 1970 which had been confirmed by the Criminal Court on 16 December 1969 and 17 April 1971. By judgment of 5 August 1975, the Court of Cassation held that the offences of simple fraud, impersonation and uttering worthless cheques had been extinguished by statutory limitation. Accordingly, the Verona Criminal Court's judgments were quashed but not, in the case of that of 1971, as regards the offence of repeated fraud.

At the same time, the Court declared a request by the applicant for provisional release to be inadmissible on the ground that it had not been established that his detention stemmed from the decisions that were under appeal.

12. Mr. Artico was, however, released on 23 August 1975 pursuant to a directive (provvedimento) issued on the same date by the Milan public prosecutor's department (procura della Repubblica). The directive, after referring to the 1975 judgment of the Court of Cassation, re-calculated at two years and eight months the total period of imprisonment due to be served in respect of the offence of repeated fraud and various other offences; as the applicant had been in prison since 8 December 1971, the period had already expired on 7 August 1974.

An application by Mr. Artico for compensation for wrongful detention was dismissed by the Court of Cassation on 4 November 1977 on the ground that it had been lodged out of time.

In a directive issued by the Ferrara public prosecutor (procuratore della Repubblica) on 15 March 1978, another re-calculation was made of the period of imprisonment due to be served by the applicant for various offences; the detention which he had undergone "unduly" ("indebitamente") from 8 August 1974 to 23 August 1975 was set off against other sentences.

b) The applicant's free legal aid

13. Mr. Artico, who had originally been represented by a lawyer of his own choice, Mr. Ferri, included in his declaration of 10 March 1972 to the Court of Cassation a request for free legal aid in connection with the

applications to quash. This request was granted on 8 August 1972 by the President of the Second Criminal Section ("the Section President") who appointed for the purpose Mr. Della Rocca, a lawyer from Rome.

14. On 4 September, Mr. Artico wrote to the Section President and the public prosecutor (procuratore generale) attached to the Court of Cassation ("the Cassation prosecutor") to inform them that he had heard nothing from Mr. Della Rocca and to request that steps be taken to provide effective assistance. By letter of 8 September, Mr. Della Rocca advised the applicant that it was only on his return from holiday that he had learned of the appointment, stated that other commitments prevented him from accepting it and gave the name of a colleague whose services he strongly recommended the applicant to utilise. On 10 October, Mr. Artico asked Mr. Della Rocca to apply for the appointment of a substitute in accordance with the procedure laid down by law. In a letter of 18 January 1973 to the applicant, the lawyer said that on 17 October he had submitted to the Section President a formal request (istanza) to that effect, indicating therein that for health reasons he was unable to undertake a task which he described as very demanding and onerous (molto impegnative e gravi); he considered that in this way he had fulfilled his obligations and expressed the wish to be left in peace.

On 30 January 1973, the applicant wrote to the Section President and the Cassation prosecutor requesting Mr. Della Rocca's replacement and enclosing a copy of the latter's letter to him of 18 January. The registry of the Court of Cassation apparently replied on 26 February with a note to the effect that Mr. Della Rocca was still acting since a lawyer appointed for legal aid purposes was not in law entitled to refuse the appointment. On 6 March, Mr. Artico – who referred as on subsequent occasions to various statutory texts - sent to the Cassation prosecutor a complaint requesting, in addition to Mr. Della Rocca's replacement, the imposition on him of criminal and disciplinary sanctions; no action seems to have been taken on this complaint, a copy whereof had been sent to the Section President. On 12 March, the applicant wrote to the Senior President of the Court of Cassation, inter alia, to draw his attention to the lack of legal assistance and to seek his intervention. By a telegram of 4 May the registry advised the applicant that Mr. Della Rocca had not been replaced and that the applications to quash were still with the public prosecutor's department. Three days later Mr. Artico wrote again to the Cassation prosecutor to complain, amongst other things, of the absence of a substitute counsel and, on 6 June, the registry sent to the applicant a telegram worded similarly to the previous one. By letter of 19 June to the Cassation prosecutor, a copy of which was sent to the Section President, Mr. Artico emphasised the situation's serious consequences for the defence and once more requested the appointment of another lawyer.

15. By notification dated 25 September, the registry of the Court of Cassation informed Mr. Della Rocca that the case was due to be heard on 12 November 1973. On 5 October, the registry sent to Mr. Artico, in reply to his telegram, a telegram advising him of the date of the hearing and that the lawyer had not been replaced. Letters dated 6 October from the applicant to the Section President and the Cassation prosecutor, which referred to several earlier communications of a similar nature, complained of Mr. Della Rocca's attitude and of the authorities' failure to act and contained a further request for replacement. On 2 November, Mr. Artico submitted to the Section President, with a copy to the Cassation prosecutor, the last of such requests, alleging a violation of the rights of the defence and asking for an adjournment of the hearing; however, this request did not reach the Court of Cassation until 20 December whereas it had already declared the applications to quash inadmissible on 12 November (see paragraph 10 above).

2. Relevant provisions of domestic law

(a) Applications to quash made to the Court of Cassation

16. Under Article 524 of the Code of Criminal Procedure:

"An application to quash may be made to the Court of Cassation on the following grounds:

1) failure to observe or erroneous application of the criminal law ...;

2) exercise by a court of a power reserved by law to legislative or administrative bodies or not granted to the State authorities;

3) failure to observe the rules of the present Code in cases where it is stipulated that non-observance shall result in nullity, inadmissibility or estoppel.

...

An application shall be inadmissible if made on grounds which are not prescribed by law or are manifestly ill-founded."

17. Article 531 provides as follows:

"When a ground on which the application would be inadmissible is pleaded by a party or is raised ex officio, the question shall be decided as a preliminary point by the Court of Cassation sitting in chambers ...

...

In all the aforesaid cases, the Court shall rule on the matter, having regard to the public prosecutor's written pleadings, without the intervention of defence lawyers.

However, in the cases contemplated in the final paragraph of Article 524, the public prosecutor's pleading shall be filed at the registry of the Court and notice of the said filing shall be given forthwith to the applicant's lawyer. The latter shall be entitled to submit, within fifteen days of the notification, to the President of the Section seised of the matter a written request that the application be heard in open court. If such a request is presented, the Court shall sit in public.

If the applicant has not appointed a lawyer, the aforesaid notice shall be given to the lawyer officially appointed for that purpose by the President."

(b) Free legal aid

18. Free legal aid is governed, inter alia, by the provisions of Royal Decree (Regio Decreto) no. 3282 of 30 December 1923.

In criminal matters, legal aid is available as of right to anyone who is in a "state of poverty" ("stato di povertà"; Article 15), which phrase is to be interpreted as meaning inability to meet the expenses involved (Article 16). The decision affording legal aid is taken by the president of the trial court (Article 15; see also Article 3 of Royal Decree no. 602 of 28 May 1931). Once granted, it is the judicial authority seised of the case which nominates the lawyer who is to act for the person concerned (Article 29 of the 1923 Decree). The prosecuting authorities or the court president may cause a substitute lawyer to be designated either on their own initiative, where there are serious reasons, or if the original lawyer "establishes legitimate grounds which oblige him to abstain, or entitle him to be excused, from acting" (Article 32). Similarly, Article 128 of the Code of Criminal Procedure provides that an officially appointed lawyer may be replaced "for a justified reason".

Article 5 of Royal Decree no. 602 of 28 May 1931 stipulates that any defence lawyer who is unable to act must supply a written statement of the reasons therefore; even after such a declaration has been made and for so long as he has not been replaced, the lawyer must fulfil the obligations of his office.

An assisted party loses the benefit of legal aid if he instructs a lawyer of his own choice (Article 128 of the Code of Criminal Procedure).

In general, legal aid comes under the supervision of the prosecuting authorities; they can take such measures as may be necessary to ensure that the case of an assisted person is properly attended to and, without prejudice to the latter's action for damages, may request the imposition of disciplinary penalties on lawyers who neglect their duties (Article 4 of the 1923 Decree).

(c) Procedure in the event of statutory limitation

19. By virtue of Article 152 of the Code of Criminal Procedure, a court is obliged, at any stage of the proceedings, to take notice of its own motion of the extinction of an offence; statutory limitation takes effect by operation of law, even where an appeal is otherwise inadmissible.

The Government conceded that in the present case the Court of Cassation should itself have raised this question in its decisions on the applications to quash.

PROCEEDINGS BEFORE THE COMMISSION

20. In his application of 26 April 1974 to the Commission, Mr. Artico alleged violations of:

- Article 5 par. 1 (art. 5-1) of the Convention, by reason of unlawful detention;
- Article 6 par. 3 (c) (art. 6-3-c), by reason of the fact that he was not assisted by a lawyer before the Court of Cassation in the proceedings that terminated on 12 November 1973.

21. On 1 March 1977, the Commission declared inadmissible, for failure to exhaust domestic remedies, the complaints relating to the allegedly unlawful nature of the detention but accepted the application insofar as it concerned the absence of legal assistance.

In its report of 8 March 1979, the Commission expressed the unanimous opinion that there had been a breach of Article 6 par. 3 (c) (art. 6-3-c).

FINAL SUBMISSIONS MADE TO THE COURT

22. At the hearings on 31 January 1980, the Government maintained the following submission made in their memorial:

> "The Court is requested to declare the application presented by Mr. Ettore Artico against the Italian Government inadmissible or ill-founded."

The Commission's Principal Delegate, for his part, invited the Court

> - "to reject for the reasons given, but above all on the ground of estoppel, the preliminary objections raised by the Italian Government";
>
> - "with regard to the merits, to decide whether the Convention has been violated and, if so, to afford to the applicant just satisfaction of an amount to be determined by the Court".

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY PLEAS

23. The Government contested the admissibility of the application on the following three grounds.

Firstly, ratione temporis: the declaration made by Italy pursuant to Article 25 (art. 25) was expressly phrased to apply only to the period subsequent to 31 July 1973 (Yearbook of the Convention, vol. 16, p. 10), whereas the facts complained of occurred at a time that could not be later than 3 and 10 July 1973, these being the dates on which the public prosecutor's pleadings were filed (see paragraph 10 above).

Secondly, domestic remedies had not been exhausted (Article 26) (art. 26) since the applicant had not complained of Mr. Della Rocca's conduct either to the Bar Association (Ordine degli avvocati) or by instituting a civil action for damages or criminal proceedings in respect of failure by a lawyer to meet his professional obligations ("patrocinio infedele"; Article 380 of the Italian Criminal Code).

Thirdly, if one sought - erroneously, in the Government's view – to hold the State responsible for the lack of legal assistance, any notional "final decision" of the Court of Cassation refusing to appoint another lawyer could only have been taken before 3 and 10 July 1973. There was therefore an interval of more than six months between that decision and the reference of the matter to the Commission - 26 April or 12 July 1974 -, the conclusion being that Mr. Artico had not observed the six months' time-limit laid down by Article 26 (art. 26) of the Convention.

24. The Court has jurisdiction to take cognisance of preliminary pleas of this kind insofar as the respondent State may have first raised them before the Commission to the extent that their character and the circumstances permitted (De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, pp. 29-31, par. 47-55).

25. This condition is not satisfied in the case of the Government's second plea. There was nothing to prevent its inclusion in written or oral observations submitted to the Commission, yet it was put forward for the first time in the Government's memorial of December 1979 to the Court. Admittedly, the Government had already relied on the rule of exhaustion of domestic remedies before the Commission in July 1976 and February 1977 but they did so on totally different grounds and solely in relation to the complaints under Article 5 (art. 5), complaints which were moreover rejected by that institution on 1 March 1977 pursuant to Article 27 par. 3 (art. 27-3) (see paragraphs 20 and 21 above; Appendix II to the report, section "Submissions of the Parties", paragraphs 1 and 2 b., and section "The Law", paragraph 1).

26. Exactly the same cannot be said of the pleas of inadmissibility ratione temporis and for failure to comply with the time limit since they were apparently raised by the Government at the hearing of 8 December 1978 before the Commission. The pleas were not accepted by the Commission: failing unanimity amongst its members, it considered that Article 29 (art. 29) was not applicable in the instant case. In point of fact, paragraphs 5 and 6 of the Commission's report do not contain enough details for it to be determined whether the arguments then put forward by the Government were substantially identical to those now advanced; however, this may be assumed to be so since the Commission's Delegates gave no indication to the contrary.

27. On the other hand, the Delegates did point out that the hearing of 8 December 1978 related to the merits of the application and not to its admissibility on which the Commission had given its decision more than twenty-one months previously, namely on 1 March 1977. On that basis, they contended that there was estoppel as regards these two pleas as well.

The Court observes that the structure of the machinery of protection established by Sections III and IV of the Convention is designed to ensure that the course of the proceedings is logical and orderly. The function of sifting which Articles 26 and 27 (art. 26, art. 27) assign to the Commission is the first of its tasks (above-mentioned judgment of 18 June 1971, p. 30, par. 51). Admittedly Article 29 (art. 29), which has been in force since 21 September 1970, provides for a subsequent review of admissibility but it makes an "a posteriori" rejection of an application conditional on a unanimous vote by the Commission. The stringency of this condition, which marks a departure from the principle of decision by a majority laid down in Article 34 (art. 34), demonstrates that the spirit of the Convention requires that respondent States should normally raise their preliminary objections at the stage of the initial examination of admissibility, failing which they will be estopped.

It is true that the reason prompting a preliminary objection sometimes comes to light only after the decision accepting the application: for example, a reversal of domestic case-law may disclose the existence of a hitherto unknown remedy (above-mentioned judgment of 18 June 1971, pp. 24-25, par. 37, pp. 31-32, par. 56-57, and pp. 33-35, par. 61-62) or an applicant may formulate a new complaint whose admissibility the respondent Government have not yet had the opportunity of contesting (Delcourt judgment of 17 January 1970, Series A no. 11, p. 8, par. 15, and pp. 19-20, par. 39-40; Schiesser judgment of 4 December 1979, Series A no. 34, p. 10, par. 20-21, and pp. 16-17, par. 39-41). In such cases, the circumstances do not permit reliance on grounds of inadmissibility at an earlier date; what is more, despite the apparent generality of the wording of Article 29 (art. 29), the respondent State is entitled by analogy to the benefit of the provisions governing the initial stage of the proceedings, in other words to obtain from

the Commission, in a supplementary decision, a ruling by majority vote (Article 34) (art. 34) on the questions of jurisdiction or admissibility submitted to the Commission by the State immediately it has been led to do so by the change in the legal situation (above-mentioned Schiesser judgment, p. 17, par. 41).

However, the present case does not furnish an example of a situation of this kind. Nothing prevented the Government from inviting the Commission, before 1 March 1977, to reject the application ratione temporis or for failure to comply with the six months' time-limit. Yet the Government unnecessarily deferred doing this until 8 December 1978 with the consequence that their plea could have succeeded only in the event of a unanimous vote (Article 29) (art. 29). The Government thereby lost the advantage of a decision by a majority (Article 34) (art. 34) and they cannot be taken to have recovered it by applying to the Court (Rule 20 par 1 of the Rules of Court); to hold otherwise would lead to a result that would be incompatible with the structure of the Convention and with a proper administration of justice.

28. The Court accordingly declares that the Government are estopped from raising each of the preliminary objections on which they seek to rely.

II. THE ALLEGED VIOLATION OF ARTICLE 6 PAR. 3 (c) (art. 6-3-c)

A. Questions of proof

29. In order to establish the facts, the Commission had to rely mainly on Mr. Artico's assertions and the documents he produced: the Government, whilst not expressly contesting these various data, had maintained that he bore the burden of proof; when the Commission had asked the Government for certain details about the course of the 1972 and 1973 proceedings before the Court of Cassation, the reply had been that the registry of that Court could not supply them because, after the applications to quash had been declared inadmissible, the files had been returned to the courts from which they originated (see paragraphs 12 and 13 of the report).

A similar approach was taken by the Government before the Court. They expressed doubts about the authenticity of several documents produced by the applicant and about the very existence of the letter which Mr. Della Rocca was said to have sent on 17 October 1972 to the President of the Second Criminal Section of the Court of Cassation (see paragraph 14 above). They also stressed that it was extremely difficult to reconstruct a detailed picture of Mr. Artico's dealings with the law in his country.

30. The Court refers on this point to its Ireland v. the United Kingdom judgment of 18 January 1978: "in the case referred to it, the Court examines all the material before it, whether originating from the Commission, the

Parties or other sources"; if necessary, the Court "obtains material proprio motu" and "will not rely on the concept that the burden of proof is borne by one or other of the two Governments concerned" (Series A no. 25, p. 64, par. 160). Mutatis mutandis, these remarks apply just as much or even more to a case deriving from an application made pursuant to Article 25 (art. 25) since neither the individual applicant nor the Commission has the status of party before the Court (Lawless judgment of 14 November 1960, Series A no. 1, pp. 11, 14 and 15-16; Rule 1 of the Rules of Court).

In the present proceedings, Mr. Artico has provided sufficient prima facie evidence. The documents of which he supplied copies to the Commission included telegrams from the registry of the Court of Cassation and many of the documents had passed through the hands of prison authorities who kept a record thereof in their files (registers of Brindisi, Milan and Venice prisons). The Government cannot therefore simply formulate reservations about these materials. Again, the Court refuses to believe that the administrative or practical difficulties relied on by the Government are insurmountable in a modern society. In addition, the Court recalls that the Contracting States have a duty to co-operate with the Convention institutions in arriving at the truth (above-mentioned judgment of 18 January 1978, p. 60, par. 148 in fine, and p. 65, par. 161 in fine). Accordingly, the Court regards the facts summarised at paragraphs 8 to 15 above as established and will take them as the basis for its examination of the merits of the case.

B. Questions concerning the merits

31. The applicant alleged a violation of Article 6 par. 3 (c) (art. 6-3-c) of the Convention, which reads:

> "Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> ..."

This contention was unanimously accepted in substance by the Commission but disputed by the Government.

32. Paragraph 3 of Article 6 (art. 6-3) contains an enumeration of specific applications of the general principle stated in paragraph 1 of the Article (art. 6-1). The various rights of which a non-exhaustive list appears in paragraph 3 reflect certain of the aspects of the notion of a fair trial in criminal proceedings (see paragraph 87 of the Commission's report; Deweer

judgment of 27 February 1980, Series A no. 35, p. 30, par. 56). When compliance with paragraph 3 is being reviewed, its basic purpose must not be forgotten nor must it be severed from its roots.

33. As the Commission observed in paragraphs 87 to 89 of its report, sub-paragraph (c) (art. 6-3-c) guarantees the right to an adequate defence either in person or through a lawyer, this right being reinforced by an obligation on the part of the State to provide free legal assistance in certain cases.

Mr. Artico claimed to be the victim of a breach of this obligation. The Government, on the other hand, regarded the obligation as satisfied by the nomination of a lawyer for legal aid purposes, contending that what occurred thereafter was in no way the concern of the Italian Republic. According to them, although Mr. Della Rocca declined to undertake the task entrusted to him on 8 August 1972 by the President of the Second Criminal Section of the Court of Cassation, he continued to the very end and "for all purposes" to be the applicant's lawyer. In the Government's view, Mr. Artico was, in short, complaining of the failure to appoint a substitute but this amounted to claiming a right which was not guaranteed.

The Court recalls that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective; this is particularly so of the rights of the defence in view of the prominent place held in a democratic society by the right to a fair trial, from which they derive (see the Airey judgment of 9 October 1979, Series A no. 32, pp. 12-13, par. 24, and paragraph 32 above). As the Commission's Delegates correctly emphasised, Article 6 par. 3 (c) (art. 6-3-c) speaks of "assistance" and not of "nomination". Again, mere nomination does not ensure effective assistance since the lawyer appointed for legal aid purposes may die, fall seriously ill, be prevented for a protracted period from acting or shirk his duties. If they are notified of the situation, the authorities must either replace him or cause him to fulfil his obligations. Adoption of the Government's restrictive interpretation would lead to results that are unreasonable and incompatible with both the wording of sub-paragraph (c) (art. 6-3-c) and the structure of Article 6 (art. 6) taken as a whole; in many instances free legal assistance might prove to be worthless.

In the present case, Mr. Artico did not have the benefit of Mr. Della Rocca's services at any point of time. From the very outset, the lawyer stated that he was unable to act. He invoked firstly the existence of other commitments and subsequently his state of health (see paragraph 14 above). The Court is not called upon to enquire into the relevance of these explanations. It finds, as did the Commission (see paragraph 98 of the report), that the applicant did not receive effective assistance before the Court of Cassation; as far as he was concerned, the above-mentioned decision of 8 August 1972 remained a dead letter.

34. Sub-paragraph (c) of Article 6 par. 3 (art. 6-3-c) does, nevertheless, make entitlement to the right it sets forth dependent on two conditions. Whilst here there was no argument over the first condition - that the person charged with a criminal offence does not have sufficient means -, the Government denied that the second condition was satisfied: on their view, the "interests of justice" did not require that Mr. Artico be provided with free legal aid. The subject-matter of the Court of Cassation proceedings was, so the Government claimed, crystallized by the grounds adduced in support of the applications to quash, grounds that were filed by the applicant in December 1971 with the assistance of a lawyer of his own choice, Mr. Ferri. However, the Government continued, the grounds related to an issue - the regularity of the summons to appear in court - that was of the utmost simplicity, so much so that the public prosecutor pleaded in July 1973 that the applications were manifestly ill-founded (see paragraphs 9-10 above); hence, a lawyer would have played but a "modest" role, limited to receiving notification to the effect that the Court of Cassation would take its decision in chambers (see paragraph 17 above).

According to the Commission's Delegates, this opinion contrasted with that of the President of the Second Criminal Section of the Court of Cassation. By 8 August 1972, when this judge granted the legal aid that had been requested on 10 March, several months had elapsed since the filing of the applications to quash and the supporting grounds; moreover, Mr. Artico had sent to the registry, on 10 and 14/15 March, declarations which he had drafted himself and which set out his further arguments (see paragraphs 9-10 above). Nevertheless, the President came to the conclusion that there was a genuine need for a lawyer to be nominated for legal aid purposes. The Delegates doubted whether it was open to the Government to argue the contrary at the present time.

The Court recalls that, subject to certain exceptions not pertinent to the present case, anyone who is in a state of poverty is entitled under Italian law to free legal aid in criminal matters (Article 15 of Royal Decree no. 3282 of 30 December 1923; see also Article 125 of the Code of Criminal Procedure).

In any event, here the interests of justice did require the provision of effective assistance. This would, according to Mr. Della Rocca, have been a very demanding and onerous task (see paragraph 14 above). At any rate, the written procedure, which is of prime importance before the Italian Court of Cassation, had not been concluded by 8 August 1972. A qualified lawyer would have been able to clarify the grounds adduced by Mr. Artico and, in particular, to give the requisite emphasis to the crucial issue of statutory limitation which had hardly been touched on in the "voluminous and verbose" declarations of 14/15 March 1972 (see paragraph 10 above and the verbatim record of the hearing of 31 January 1980). In addition, only a lawyer could have countered the pleadings of the public prosecutor's

department by causing the Court of Cassation to hold a public hearing devoted, amongst other things, to a thorough discussion of this issue (see paragraph 17 above).

35. The Government objected that this was pure conjecture. In their view, for there to be a violation of Article 6 par. 3 (c) (art. 6-3-c), the lack of assistance must have actually prejudiced the person charged with a criminal offence.

The Court points out, in company with the Commission's Delegates, that here the Government are asking for the impossible since it cannot be proved beyond all doubt that a substitute for Mr. Della Rocca would have pleaded statutory limitation and would have convinced the Court of Cassation when the applicant did not succeed in doing so. Nevertheless, it appears plausible in the particular circumstances that this would have happened. Above all, there is nothing in Article 6 par. 3 (c) (art. 6-3-c) indicating that such proof is necessary; an interpretation that introduced this requirement into the sub-paragraph would deprive it in large measure of its substance. More generally, the existence of a violation is conceivable even in the absence of prejudice (see the Marckx judgment of 13 June 1979, Series A no. 31, p. 13, par. 27); prejudice is relevant only in the context of Article 50 (art. 50).

36. The Government criticised Mr. Artico for not having recourse to the services of the colleague of whom Mr. Della Rocca spoke highly (see paragraph 14 above) and for failing to induce the Court of Cassation to take notice of the issue of statutory limitation, allegedly because he did not plead it either soon enough, that is as from December 1971, or with sufficient emphasis and persistence.

The second criticism is tantamount to saying that the interests of justice did not necessitate the presence of a lawyer, a matter on which the Court has already ruled (see paragraph 34 above); in fact it confirms if anything that his presence was indispensable. The first criticism also does not bear examination since the applicant would have lost the benefit of free legal aid had he followed Mr. Della Rocca's advice (see paragraph 18 above).

In reality, Mr. Artico doggedly attempted to rectify the position: he multiplied his complaints and representations both to his official lawyer - to the extent of importuning and even finally exasperating him - and to the Court of Cassation (see paragraphs 14-15 above). Admittedly, a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes but, in the particular circumstances, it was for the competent Italian authorities to take steps to ensure that the applicant enjoyed effectively the right to which they had recognised he was entitled. Two courses were open to the authorities: either to replace Mr. Della Rocca or, if appropriate, to cause him to fulfil his obligations (see paragraph 33 above). They chose a third course - remaining passive -, whereas compliance with the Convention called for positive action on their part (see the above-mentioned Airey judgment, p. 14, par. 25 in fine).

37. The Court thus concludes that there has been a breach of the requirements of Article 6 par. 3 (c) (art. 6-3-c).

38. Initially, the applicant put forward a further claim based on sub-paragraph (b) of Article 6 par. 3 (art. 6-3-b); he invoked that sub-paragraph (b), and sub-paragraph (c) for that matter, in conjunction with Articles 13, 14, 17 and 18 (art. 13, art. 14, art. 17, art. 18) (admissibility decision of 1 March 1977, sections "Complaints" and "Submissions of the Parties"). In view of the conclusion appearing in the preceding paragraph, the Court does not consider that it has to rule on issues to wich no reference was made during the proceedings before it by the Government or the Commission.

III. THE APPLICATION OF ARTICLE 50 (art. 50)

39. On behalf of Mr. Artico, Mr. Solinas claimed payment

- of professional fees for services rendered before the Commission and the Court;
- of just sums in respect of the unlawful detention allegedly resulting from the breach of Article 6 par. 3 (c) (art. 6-3-c) and of non-pecuniary injury.

The Commission's Delegates, for their part, invited the Court to afford to the applicant, under Article 50 (art. 50), satisfaction of an amount to be determined by the Court.

Having also heard the Government's observations, the Court considers that this question is ready for decision (Rule 50 par. 3, first sentence, of the Rules of Court).

A. Professional fees

40. In a note dated 27 February 1980, Mr. Solinas indicated that his fees amount to Lire 2,573,000 from which should be deducted the sums already received from the Council of Europe, namely FF 6,949.43 according to a résumé which the Secretary to the Commission supplied to the registry on 12 March in reply to a question from the Court.

It appears from these two documents and paragraph 4 of the report hat the applicant had the benefit of free legal aid - before the Commission and then, after reference of the case to the Court, in his relations with the Delegates - throughout the period subsequent to the admissibility decision of 1 March 1977. He did not maintain that he paid or is liable to pay to Mr. Solinas, who was not acting for him before that date, additional fees for which he might seek reimbursement. It follows that, in this respect, Mr. Artico has borne no costs and has suffered no loss capable of being compensated under Article 50 (art. 50). The Court refers on this point to its Luedicke, Belkacem and Koç judgment of 10 March 1980 (Series A no. 36, p. 8, par. 15).

B. "Unlawful detention" and non-pecuniary injury

41. Basing himself on various directives (provvedimenti) relative to the concurrence (unificazione) or accumulation of his sentences (see paragraph 12 above and the verbatim record of the hearing of 31 January 1980), Mr. Artico asserted that he would have been released on 7 August 1974, rather than on 23 August 1975, if on 12 November 1973 the Court of Cassation had declared that proceedings were barred as a result of statutory limitation. He maintained that the twelve months and sixteen days which he spent in prison unduly (indebita carcerazione) were the "direct and immediate consequence of the violation of the right of defence".

42. The Government expressed reservations about the very existence of any abnormal deprivation of liberty, claiming that the divergent views expressed by the authorities which in turn examined the matter, including the Court of Cassation in 1975 (see paragraph 11 in fine above), and the extraordinary profusion (straordinaria prolificità) of the applicant's criminal convictions demonstrated the enormous difficulty (difficoltà enorme) of retracing his curriculum vitae.

The documentary evidence nevertheless leaves the impression that Mr. Artico would indeed have been released as early as 7 August 1974 if the Court of Cassation had held in its rulings on the applications to quash that statutory limitation applied. In fact, the prospects of such a decision would have been greater if the applicant had had the benefit of effective legal assistance. On this point, the Court refers to paragraphs 30, 34 and 35 above and concurs with the opinion of the Commission's Delegates; it also recalls that in certain cases the loss of real opportunities warrants the award of just satisfaction (see the König judgment of 10 March 1980, Series A no. 36, p. 17, par. 19).

43. However, the injury which the applicant alleged he suffered by reason of his unlawful detention is but a hypothetical and, at the most, indirect consequence of the breach of Article 6 par. 3 (c) (art. 6-3-c); the "direct and immediate" cause of that injury is actually to be found in an interference with his physical liberty.

In this connection, it should not be forgotten that on 1 March 1977 the Commission declared inadmissible, for failure to exhaust domestic remedies, the complaint concerning the alleged violation of Article 5 (art. 5); it took the view that, after the appeal judgment of 5 August 1975, Mr. Artico should have sought compensation in the courts of his country on the strength of either Article 571 of the Code of Criminal Procedure or Article 5 par. 5 (art. 5-5) of the Convention (see paragraph 21 above and Appendix II to the report).

44. At that point the applicant did file a claim for compensation but it was rejected by the Court of Cassation on 4 November 1977 since the statutory time-limit of eighteen months had expired on 5 February (see

paragraph 12 above and the verbatim record of the hearing of 31 January 1980).

The Government stressed that that judgment is final and is not the subject of any complaint on the part of the applicant (decisione irrevocable, definitiva, non impugnata); they contended that on this ground alone the issue of compensation for unlawful detention was closed.

The Court is not convinced by this argument. Admittedly, Mr. Artico omitted to have recourse in due time to the remedies available under Italian law but this does not compel the Court to dismiss his present claims (see the De Wilde, Ooms and Versyp judgment of 10 March 1972, Series A no. 14, pp. 7-10, par. 14-16 and 20, and the above-mentioned König judgment, pp. 14-15, par. 15); besides, those claims have a different basis in law, namely the consequences of the lack of effective legal assistance.

45. Nevertheless, it has to be remembered that the Ferrara public prosecutor set off against later sentences the year and sixteen days of imprisonment in question (see paragraph 12 above). The applicant alleged that the practical benefit of this measure was limited to sixteen days, arguing that he would in any event have been granted a year's remission of sentence (indulto) by reason of Presidential Decree no. 413 of 4 August 1978 (Gazzetta Ufficiale, 1978, pp. 5557-5560). In point of fact, the directive (provvedimento) of the Ferrara public prosecutor's department predated the Decree, having been issued on 15 March 1978. On that date, Mr. Artico still had to serve a "debit balance" of one year, ten months and twenty-one days after allowance had been made in respect of the setting-off. Thus, it did confer on him a tangible advantage, without prejudice to the advantage which he might afterwards have been able to derive from the aforesaid Decree. Although the setting-off did not provide him with complete reparation (restitutio in integrum), it compensated to a large extent the damage he suffered (see the Ringeisen judgment of 22 June 1972, Series A no. 15, p. 10, par. 26; the Neumeister judgment of 7 May 1974, Series A no. 17, pp. 18-19, par. 40-41; the Engel and others judgment of 23 November 1976, Series A no. 22, pp. 68-69, par. 10).

46. As regards the nature of the remaining damage, the Court notes that Mr. Artico has not established, or even alleged, any pecuniary loss. On the other hand, the additional period of imprisonment which might have been brought about - indirectly - by the absence of effective legal assistance (see paragraphs 42 and 43 above) undoubtedly caused him non-pecuniary injury.

47. To this has to be added the non-pecuniary injury resulting directly from the violation of Article 6 par. 3 (c) (art. 6-3-c), in respect of which the setting-off of the aforesaid period against later sentences clearly has no relevance: for more than a year the applicant remained without a lawyer, other than nominally, despite his pressing and repeated complaints and representations (see paragraphs 13-15 above). In all probability he was left with a distressing sensation of isolation, confusion and neglect. In

particular, when the public prosecutor submitted on 3 and 10 July 1973 that the applications to quash should be dismissed in chambers, Mr. Artico must have felt defenceless since only a lawyer could have countered that submission by demanding a public hearing in the presence of the parties (see paragraphs 10 and 17 above).

48. None of the above elements of damage lends itself to a process of calculation. Taking them together on an equitable basis, as is required by Article 50 (art. 50), the Court considers that Mr. Artico should be afforded satisfaction assessed at three million (3,000,000) Lire.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares that the Government are estopped from contesting the admissibility of the application;

2. Holds that there has been breach of Article 6 par. 3 (c) (art. 6-3-c);

3. Holds that the Italian Republic is to pay to the applicant compensation of Lire 3,000,000 for non-pecuniary injury;

4. Rejects the remainder of the claim for just satisfaction.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, this thirteenth day of May, one thousand nine hundred and eighty.

For the President
Leon LIESCH
Judge

Marc-André EISSEN
Registrar