

APPLICATION N° 22998/93

Francesco DANINI v/ITALY

DECISION of 14 October 1996 on the admissibility of the application

Article 1 of the Convention *This Article, even where it is invoked in conjunction with other Articles, cannot be the subject of a separate violation. There is therefore no need for a separate examination.*

Article 2, paragraph 1 of the Convention *Under the terms of the first sentence of this paragraph, the States are obliged to take adequate measures to protect life. However, an obligation to prevent every possibility of violence cannot be derived from that provision.*

In this case, there were no circumstances rendering it foreseeable that the applicant's daughter would be murdered or that her life was in real and imminent danger, and the judicial authorities, in omitting to take action against the person who had threatened and subsequently murdered her, did not fail to fulfil the positive obligations flowing from this Article.

Article 6, paragraph 1, and Article 13 of the Convention *The right of access to a court does not include a right to have criminal proceedings instituted against a third person or a right to secure a conviction in criminal proceedings.*

Article 25 of the Convention *The father of a murdered person considered as victim of an alleged violation of Article 2 of the Convention.*

Article 26 of the Convention

a) Domestic remedies have not been exhausted where an appeal has been rejected because of a procedural mistake by the appellant.

b) *As regards complaints not included in the application itself, the running of the period of six months is not interrupted until the date when the complaint is first submitted to the Commission*

THE FACTS

The applicant is an Italian national, born in 1938, and lives in Genoa. He is a tailor.

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

a) *Particular circumstances of the case*

On 12 July 1989, the applicant's daughter, M., informed the police, following a criminal complaint made against her by her ex-fiancé B.P., that the latter had threatened to kill her. B.P. had a history of mental disorder. The applicant's daughter allegedly contacted the judicial authorities again, on various dates, regarding further threats by B.P.; there is no record of these complaints or of what became of them.

The statement of 12 July 1989 read as follows:

"Io sottoscritta (...) ho subito minacce ed insulti dal signor B.P. () Sabato mattina 1 luglio 1989 il P. entro' nel mio locale di sartoria a Genova. Voltri e notando che ero sola mi ha subito investita pieno di collera gridandomi 'cosa é questa storia che dici di avere un figlio mio? dov'è? tiralo fuori avanti!' e così' insistendo minacciava di uccidermi perché, sempre a suo dire, é da cinque anni che io e il mio ragazzo () 'lo stiamo tormentando e lo facciamo soffrire'. Io gli dissi che avrei riferito tutto al mio ragazzo e lui mi rispose di dirglielo pure così' gli restituiva i pugni che gli aveva dato (altra menzogna). Così' continuando gridava dicendo frasi sconnesse come quella che lui 'doveva pagare per andare a nuotare e che era colpa mia poiché io ordinavo che lui doveva pagare!' e poi ancora le stesse minacce che mi voleva uccidere e togliermi dalla faccia di questa terra!! così' pieno d'ira veniva avanti dinanzi a me tremante di collera e alzando la mano destra all'altezza del mio volto sembrava che stesse per colpirmi, ma dato che io restai calma ed immobile guardandolo con indifferenza e invitandolo ad andarsene, lui uscì' borbottando e insultandomi. Il P. lo conobbi nel gennaio 1983 ad una festa e ci frequentammo per circa sei o sette mesi litigando spessissimo poiché lui era ossessionato dalla gelosia e dava chiari segni di squilibrio, fu così' che ci lasciammo a causa di questa sua mania di persecuzione tanto é vero che lo accompagnai io di persona al Reparto

Neuropsichiatria dell'Ospedale di Sestri P per curarsi. Ora, e da cinque anni che esco con il mio ragazzo () e prima di sabato 1 luglio 1989 non ci sono mai state discussioni o minacce da parte del soprannominato P nei miei confronti, ossia dalla meta dell'83 a luglio 89, 6 anni fa

(Translation)

'I have been threatened and insulted by B P. On 1 July 1989, he came to my shop in Genoa and, on seeing that I was alone, screamed at me, shaking with anger 'what's this you've been saying about having my child? Where is he? Let me see him!' and, repeating these questions, he threatened to kill me, because, as far as he was concerned, I and my boyfriend had been tormenting him and making him suffer for five years. I told him that I would tell my boyfriend everything and he replied that I could go ahead, as that would serve him right for punching him (that is another lie). He continued shouting meaningless remarks in this way, such as that he was being made to pay for swimming because of me, as I was the one ordering him to pay and he repeated his threats to kill me and wipe me off the face of the earth. He lunged at me in a fit of anger, raising his right hand level with my face, as though he were about to hit me, however, as I did not react, but remained calm and motionless, looking at him with indifference and asking him to leave, he went out muttering and insulting me. I met B P in January 1983 at a party, we went out together for about six or seven months, but often argued as a result of his obsessional jealousy, he was clearly unbalanced and we eventually split up as a result of his persecution mania. I personally accompanied him to Sestri psychiatric hospital for treatment. I have now been going out with my current boyfriend for five years and before 1 July 1989 i.e. since mid 1983 (six years), I had never argued with or been threatened by B P.

On 8 August 1989 the police sent the Genoa public prosecutor a report on the facts related by M and made special reference to B P's mental disorder.

On 27 September 1989, at the public prosecutor's request, the judge dealing with the preliminary investigation for the *pietore* of Genoa discontinued the proceedings, as M had not lodged a formal complaint (*querela*) against B P.

On 13 January 1990 B P murdered M.

On 26 February 1990 the applicant filed a complaint with the Supreme Council of the Judiciary against the *pretore* of Genoa who had decided to discontinue the proceedings. He accused him of neglecting his official duty and of negligent homicide.

On 18 April 1990 the Supreme Council of the Judiciary decided not to take any action, on the ground that they lacked jurisdiction.

On 18 July 1990 the applicant filed the same complaint with the Milan public prosecutor.

On 23 July 1990 the public prosecutor applied to the investigating judge for the proceedings to be discontinued. The applicant appealed.

The investigating judge gave a decision on 10 June 1991, dropping the proceedings. Regarding the allegation that the *pretore* of Genoa had neglected his official duty, he declared that the *pretore* had acted lawfully in taking no action, as no formal complaint had been lodged against B P. As regards the charge of negligent homicide the judge stressed, finally, that the instigation of proceedings against B P would not have prevented him from murdering the victim, as it is impossible under the Code of Criminal Procedure, to obtain a personal injunction against someone who has made threats to kill.

Meanwhile Genoa Assize Court gave a decision on 12 January 1991 which was upheld by Genoa Assize Court of Appeal on 13 June 1991 (in a decision which became final on 20 October 1991), that B P should not be committed for trial on the ground that he lacked mental capacity (*incapace d'intendere e di volere*). He was committed to a psychiatric hospital and is still there now.

On 19 May 1992 the applicant appealed on points of law against the judgment of Genoa Assize Court of Appeal. The Court of Cassation dismissed his appeal in a decision of 18 November 1992.

The applicant subsequently filed numerous criminal complaints against the judges and experts who had dealt with the case and against each judge who had decided to take no action. The investigating judge attached to Milan court ordered an expert psychiatric report on the applicant. He was found to be suffering from paranoia manifesting itself in the compulsive filing of criminal complaints (*paranoia nella forma del delirio di querela*) and to have been entirely lacking in mental capacity when signing the various complaints. The investigating judge therefore discontinued the proceedings.

An investigation had been commenced following a charge of defamation against the applicant but those proceedings were also dropped in the light of the expert opinion.

b) *Relevant domestic law*

Under sections 612 and 339 of the Criminal Code, no one can be prosecuted for making threats unless the victim has filed a formal complaint, i.e. has expressed his or her wish that the perpetrator be prosecuted, save where the threats are serious or are made in aggravating circumstances (e.g. accompanied by the use of firearms), in which case criminal proceedings are instituted *ex officio*

Under sections 33, 34 and 35 of Law no. 833 of 23 December 1978 on the creation of the Italian National Health Service, the mayor acting as the local health authority may, on a doctor's request stating reasons, order compulsory medical examinations or treatment. Such examinations or treatment may result in hospitalisation if the subject's mental health is found to have deteriorated to such an extent that urgent therapy becomes necessary. In such cases the guardianship court has to ratify the mayor's decision within forty-eight hours.

COMPLAINTS

1. The applicant complains, firstly, about the Italian judicial authorities' failure to take any action. He submits that, despite the complaint lodged by his daughter against B.P., the authorities failed to protect her and therefore allowed her to be murdered.

He complains, *inter alia*, that the investigating judge attached to the *pretore* of Genoa failed to inform the authorities which had power, under Law no. 833/1978, to commit B.P. for compulsory psychiatric treatment.

He alleges a violation of Articles 2 and 13 of the Convention in this respect.

2. He complains further under Article 7 of the Convention, that no proceedings were brought against the *pretore* of Genoa and, under Article 13 of the Convention, that the decision not to commit his daughter's murderer for trial meant that all his legitimate expectations, namely an establishment of the facts and the imposition of penalties against the murderer, were largely neglected.

In his observations in reply to those of the respondent Government, the applicant also alleged under Article 13 of the Convention that the criminal proceedings brought against his daughter's murderer, which he applied to join as a civil party, were not conducted in compliance with his right to a fair trial.

3. He invokes finally Article 1 of the Convention.

THE LAW

1 The applicant complains, firstly, invoking Articles 2 and 13 of the Convention, that the Italian authorities failed to protect his daughter from someone who was mentally ill and had threatened to kill her. He complains in particular that the judicial authorities failed to inform the administrative authorities which, he submits, have the power, under Law no 833/1978, to commit mentally ill persons for compulsory psychiatric treatment.

The Commission considers, first of all, that the applicant, as a father affected by his daughter's death, may in that respect claim to be a "victim" within the meaning of Article 25 of the Convention (see No 9833/82, Dec 7 3 85 D R 42 pp 53 et seq.)

Article 2 of the Convention provides that "everyone's right to life shall be protected by law" and that "no one shall be deprived of his life intentionally".

The Commission's approach to the interpretation of Article 2 must be guided by a recognition that the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective (see Eur Court HR, *Soering v the United Kingdom* judgment, p 34, para 87).

It should also be recalled that Article 2 of the Convention is one of paramount importance from which no derogation is permissible, even in the event of a danger to the public. Taken together with Article 3 of the Convention, it enshrines one of the fundamental values of the democratic societies making up the Council of Europe (see Eur Court HR, *Soering* judgment, *op cit*, p 34, para 88 and *McCann and Others v the United Kingdom* judgment of 27 September 1995, to be published para 146).

The Commission recalls its case law according to which the first sentence of Article 2 imposes a broader obligation on the State than that contained in the second sentence. The concept that "everyone's life shall be protected by law" enjoins the State not only to refrain from taking a person's life 'intentionally' but also to take appropriate steps to safeguard life (see No 11604/85, Dec 10 10 86, D R 50 p 259, No 16734/90, Dec 2 9 91, D R 72 p 236).

The Commission considers that Article 2 may, like other Articles of the Convention (see Eur Court HR, *Marckx v Belgium* judgment of 13 June 1979, Series A no 31, p 14, para 31) impose positive obligations on the State. That does not mean that a positive obligation to prevent every possibility of violence (see No 9348/81, Dec 28 2 83, D R 32 p 190 and No 16734/90, Dec 2 9 91, D R 72 p 239) or to provide a bodyguard indefinitely (No 6040/73, Dec 20 7 73, Collection 44, p 121) can be derived from the provision concerned.

The Italian Government argue, firstly, that as Italian criminal procedure provides that the perpetrators of less serious offences can be prosecuted only at the victim's express request, the authorities acted entirely lawfully and correctly in deciding to discontinue the proceedings relating to the complaint lodged by the applicant's daughter, on the ground that she had not explicitly stated that she wanted B P to be prosecuted for making threats

They submit that, in any event, no causal link can be established between the failure to prosecute for threats and the murder of the applicant's daughter, as no personal injunction can be imposed for the offence of making threats

The Government stress finally, that the *pretore* of Genoa did not investigate the merits of the accusations made by the applicant's daughter against her ex-fiancee because she had not lodged a formal complaint consequently, in the absence of any examination of the merits of the case, the *pretore* could not have referred the case to the health authorities under Law No 833/1978

The applicant argues however, that the Italian judicial authorities remained entirely passive, despite the fact that his daughter had given them a precise and detailed description of the facts which could have alerted them to the danger in time

He challenges, in particular, the notion that in law his daughter simply reported the offence, rather than lodging a formal complaint and refers in this regard to a judgment of the Italian Court of Cassation in 1980 regarding the former Code of Criminal Procedure, in which the court had held that there did not have to be an express request for the perpetrator to be prosecuted The applicant lays particular emphasis on the consequences of this legal definition, especially the impossibility of following the complaint up or even examining its contents He argues that if his daughter's complaint had been investigated, her murder could have been prevented in so far as the judge would certainly have been obliged, confronted as he was with a mentally unstable individual, to inform the health authorities of the need to take adequate restrictive measures pursuant to sections 33, 34 and 35 of Law No 833/1978

The Commission observes that it is not contested that no interim custodial measure could have been imposed in the circumstances of this case

As regards the possibility of committing B P to a psychiatric hospital, the Commission notes that as the Government claim and the applicant admits, in the absence of a formal complaint which would have allowed the authorities to investigate the merits of the applicant's daughter's accusation that B P had threatened her the judicial authorities could not have referred the matter to the health authorities pursuant to Law No 833/1978

The issue before the Commission is therefore whether, irrespective of the legal definition of the complaint filed by the applicant's daughter, the Italian authorities, having been informed that B P had threatened to kill her, could and should have intervened in order to prevent him from carrying out his threats

The statement by the applicant's daughter shows that she complained of having been harassed and threatened by B P, but took pains to specify that it was the first and only time since the couple had separated six years earlier that he had threatened her or that they had argued

The Commission refers to the wording of Law No 833/1978 and, in particular, to the necessity of the subject's "mental health deteriorat[ing] to such an extent that urgent therapy becomes necessary" It considers, moreover, that caution must be exercised in this area to avoid any abuse or error with regard to the rights to dignity and respect for private life of the mentally ill

Having regard to these considerations, and despite the tragic circumstances in which the applicant's daughter died, the Commission considers that the circumstances of the case were not such as to render it foreseeable that the applicant's daughter would be murdered or that her life was in real and imminent danger the Italian judicial authorities, in omitting to take action against B P, did not therefore fail to comply with the positive obligations flowing from Article 2 of the Convention

It follows that the application is manifestly ill-founded on this point and must be rejected pursuant to Article 27 para 2 of the Convention

Having regard to the foregoing, the Commission does not consider it necessary to go on to consider this complaint from the standpoint of Article 13 of the Convention

2 The applicant also complains about the failure to institute criminal proceedings against the *pretore* of Genoa and about the decision not to commit B P for trial

In his observations in reply to those of the respondent Government, the applicant alleged that the criminal proceedings brought against his daughter's murderer, which he joined as a civil party, were not conducted in compliance with his right to a fair trial

The Commission considers, firstly, that the complaints based on the failure to prosecute and the alleged unfairness of the proceedings fall within Article 6 para 1 of the Convention

It recalls further that neither the right of access to a court, provided for in Article 6 para 1 of the Convention, nor Article 13 of the Convention includes a right to have criminal proceedings instituted against a third person or a right to secure a conviction in criminal proceedings (see No 7116/75, Dec 4 10 76, D R 7 p 91, at p 94, No 9777/82, Dec 14 7 83, D R 34 p 158) It follows that the complaints

regarding the failure to prosecute the *pietore* and the decision not to commit B P for trial are incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 27 para 2

As regards lastly, the complaint based on the alleged unfairness of the proceedings, the Commission is not required to decide whether it reveals the appearance of a violation of the Convention or of its Protocols

The Commission recalls that, under Article 26 of the Convention, the Commission may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken. The Commission recalls further that domestic remedies have not been exhausted where an appeal has been rejected because of a procedural mistake by the appellant (see No 18079/91 Dec 4 12 91, D R 72 p 263)

Even supposing that the applicant has exhausted the domestic remedies available to him under Italian law, the Commission notes that the applicant raised this complaint in his observations dated 7 March 1996, whereas the proceedings complained of had finished on 18 November 1992, that is, many more than six months before the complaint was introduced

It follows that this part of the application must be rejected pursuant to Article 27 para 3 of the Convention

3 As regards the complaint based on Article 1 of the Convention, the Commission recalls that, as this Article contains an entirely general obligation, it should not, even if invoked at the same time and in conjunction with other Articles, be seen as a provision which can be the subject of a separate breach (see the case of Ireland v the United Kingdom, Comm Report, Eur Court HR, Series B no 23 I, pp 491 492)

In the light of the Commission's consideration of the case under Article 2 of the Convention, it does not consider it necessary to examine this aspect of the application separately

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE