

**APPLICATION N° 39693/98**

Giuseppe DURANTE v/ITALY

DECISION of 2 July 1998 on the admissibility of the application

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*Article 26 of the Convention where an application to have a judgment quashed and for a retrial is ruled inadmissible, the six-month period does not start running anew. contrast the situation where such an application is ruled admissible and the proceedings are actually reopened*

*Where domestic proceedings are reopened as a result of an application to have a judgment quashed and for a retrial, the six-month period starts on the date on which the judgment finally dismissing the application is given, later unsuccessful applications to the same end cannot be taken into account.*

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**THE FACTS**

The applicant is an Italian national. He was born in 1959 and is currently in prison in Cuneo. He was represented before the Commission by Mr Luciano Garofalo of the Bari Bar and Mr Francesco Fasano of the Lecce Bar.

In a judgment of 9 February 1987, which was deposited at the court registry on 16 March 1987, Lecce Assize Court found the applicant guilty of murder and unlawfully obtaining and possessing a gun, and sentenced him to life imprisonment.

Lecce Assize Court of Appeal upheld this decision on 5 February 1988. The applicant appealed on points of law to the Court of Cassation, which, on 8 November 1988, found against him, thus rendering his conviction final.

On 8 November 1991 the applicant's father lodged an application with Lecce Court of Appeal for the proceedings to be reopened with a view to the quashing of his son's conviction and a retrial, on the grounds, *inter alia*, that new facts which had come to light after the proceedings had ended showed that his son should have been acquitted.

In a decision of 16 December 1991 (deposited with the court registry on 27 December 1991), the Court of Appeal (First Chamber) held the application inadmissible on the ground that the new evidence was not capable of giving rise to reasonable doubt as to the applicant's guilt

The applicant appealed on points of law to the Court of Cassation, which, on 9 March 1992, quashed the decision of 16 December 1991, holding, *inter alia*, that the new facts adduced by the applicant's father could, if proven, cast doubt on the credibility of the main prosecution witness and support the defence case. The court accordingly ordered that the case be transferred to a different chamber of Lecce Court of Appeal for a ruling on the merits of the application for the conviction to be quashed and for the applicant to be retried.

In a decision of 27 February 1993 (deposited with the court registry on 27 May 1993), Lecce Court of Appeal (Second Chamber), having examined the evidence on which the applicant had been convicted and the new evidence adduced after the original proceedings had ended, dismissed the application.

The applicant appealed on points of law on 25 June 1993. On 22 December 1993 the Court of Cassation dismissed the appeal, on the grounds that the Court of Appeal had given logical and proper reasons for its conclusions on all the points at issue.

The applicant subsequently lodged further applications with the national courts for his conviction to be quashed and for a retrial, all of which were unsuccessful. The last of these was declared inadmissible on 27 March 1997 by Lecce Court of Appeal.

## COMPLAINT

Relying on Article 6 paras 1, 2 and 3 (d) of the Convention, the applicant complained that the criminal proceedings against him, and in particular the proceedings concerning his application to have his conviction quashed and for a retrial, had been unfair. He cast doubt on the impartiality and independence of Lecce Court of Appeal and alleged that the national courts dealing with his case had not properly assessed the new evidence which had come to light after his conviction. Furthermore, he asserted that the courts had refused to investigate the facts of the case thoroughly.

## THE LAW

The applicant complained that the criminal proceedings against him and in particular the proceedings concerning his application to have his conviction quashed and for a retrial had been unfair. He cast doubt on the impartiality and independence of Lecce Court of Appeal and alleged that the national courts dealing with his case had not properly assessed the new evidence which had come to light after his conviction. Furthermore, he asserted that they had refused to investigate the facts of the case thoroughly. He relied on Article 6 paras 1, 2 and 3 (d) of the Convention.

However, it is not necessary for the Commission to consider whether the matters referred to by the applicant disclose an apparent violation of the provisions he relied on.

The Commission reiterates that, in accordance with Article 26 of the Convention, it may deal with a matter only 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. Moreover, it is settled Commission case law that applications for proceedings to be reopened do not start the six month period running again unless they actually result in a reopening (see No 23949/94, Dec 18 5 91, D.R. 77, p 140 at p 142 and No 10431/83, Dec 16 12 83, D.R. 35, p 241 at p 243).

It is true that, in the present case, on 9 March 1992 the Court of Cassation set aside the inadmissibility decision concerning the application for the conviction to be quashed and for a retrial, and thus reopened the proceedings. However, the national courts went on to confirm that the applicant's conviction was sound. The Commission considers that the six month period must be regarded as starting at the latest, on 22 December 1993, the date of the Court of Cassation's judgment finally dismissing the application. In this regard the Commission notes that the applicant's further attempts to have his conviction quashed and to be retried did not succeed in having the case reopened so that the decisions ruling them inadmissible cannot be taken into account in determining the date of the final domestic decision.

It follows that the application, which was introduced on 10 September 1997, was out of time and must be rejected pursuant to Articles 26 and 27 para 3 of the Convention.

For these reasons the Commission, unanimously

**DECLARES THE APPLICATION INADMISSIBLE**