

APPLICATION N° 27143/95

Bruno CONTRADA v/ITALY

DECISION of 14 January 1997 on the admissibility of the application

Article 5, paragraph 1 (c) of the Convention

- a) It cannot be required in order to justify arrest and detention on remand that the existence and the nature of the offence of which the person concerned is suspected be established since that is the aim of the investigation the proper conduct of which is facilitated by the detention*
- b) In deciding whether there are plausible grounds for suspecting a person of having committed an offence it falls in the first place to the national authorities to assess the credibility of accusations made by former members of a criminal organisation who have decided to co operate with the judicial authorities. The national authorities enjoy a wide margin of appreciation in this area but the conclusions they draw from the evidence in their possession must not be manifestly unreasonably or arbitrary*

Arrest and detention on remand of a senior police officer on the basis of statements by mafiosi turned informers (pentiti) In the instant case, notwithstanding considerable doubts as to the credibility of these statements the Commission does not find anything arbitrary in the conclusions drawn by the national authorities. Examination of the statements by three levels of jurisdiction

THE FACTS

The applicant is an Italian national, born in Naples in 1931, and lives in Palermo. He was represented before the Commission by Mr Pietro Milio, a lawyer practising in Palermo.

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

A *The circumstances of the case*

1 The first *pentiti* statements and the applicant's imprisonment

The applicant is a senior police officer. At the time of his arrest, he was working in Palermo as the Deputy Director of the Secret Civil Service (SISDE) for Sicily. In the same city, he had previously been head of the Flying Squad, head of the Criminal Investigation Police (Criminalpol) and office director for the Antimafia High Commission (*Alto Commissario Antimafia*).

The applicant was imprisoned on 24 December 1992 further to an order issued on 23 December 1992 by the preliminary investigations judge (*Giudice per le indagini preliminari*) attached to Palermo District Court, at the request of the Palermo prosecuting authorities. The applicant was accused of Mafia association (*concorso in associazione di stampo mafioso* sections 110, 416 and 416 bis of the Criminal Code). The accusation was based on the statements of four mafiosi who had decided to cooperate with the authorities (known as *pentiti* and hereinafter referred to as such). He was initially imprisoned in Palermo Military Prison.

The first four statements made prior to the applicant's arrest may be summarised as follows:

G Mutolo claimed that an ex-mafioso, R Riccobono, who died in 1982, had told him that the applicant was at the service of key Mafia leaders for whom he had done a number of unspecified favours. R Riccobono had also told him that a Mafia property developer, A Graziano, who died in 1977, had provided the applicant with a flat and that in 1981 the Mafia had spent 15 million lire on a Christmas present of a car for one of the applicant's mistresses.

G Mutolo had also claimed that in 1975 the Mafia had decided to eliminate the applicant, another police officer and a *carabiniere* officer and had instructed A Graziano himself to shadow him. After the other two officers had been eliminated,

G. Mutolo allegedly asked R Riccobono why the applicant was still alive, whereupon the latter replied that the applicant was "at the service" (of the Mafia) (1)

T Buscetta had related in 1984 how R Riccobono had advised him to return to Palermo and had reassured him that the police would not be looking for him. T Buscetta subsequently informed S Bontade (a mafioso belonging to a different clan who was subsequently murdered) of the details of his conversation with R Riccobono. S. Bontade then drew T. Buscetta's attention to the fact that R. Riccobono was passing information to the police, in particular, the applicant. An investigation was commenced shortly afterwards into the allegations against the applicant, but was discontinued. On 25 November 1992, T Buscetta repeated the statement he had made in 1984, while specifying that he did not have first-hand knowledge of the facts.

R Spatola accused the applicant of having helped T Riina, a key mafioso, currently in prison and on trial, to escape during a police operation in the early 1980s. R. Spatola also claimed that the applicant was a Freemason and that he had contacts with the Mafia leaders, who were also Freemasons. R Spatola also described how a police operation set up to arrest key mafiosi fugitives while they were in a hotel was foiled by a telephone call warning them of an imminent police raid

G Marchese, for his part, stated on 4 November 1992 that in 1981, after returning from a meeting with key Mafia leaders, his uncle had instructed him to forewarn T Riina, as he had been informed by the applicant that the police had found out where T. Riina lived and were preparing to search his home. T Riina then left his home and hid elsewhere. During questioning on 2 October 1992, however, G Marchese had stated that T. Riina had left his home for security reasons relating to disputes between various Mafia clans

In the reasons for the order of 23 December 1992, the preliminary investigations judge found that the above 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 objective evidence which confirmed their credibility. That evidence consisted of the following facts in particular: the applicant had indeed had the use of a flat belonging to the Mafia; the applicant was a member of a masonic lodge to which a senior mafioso also

(1) This same *pentito* had earlier accused the following persons of collusion with the Mafia: the public prosecutor dealing with his case, four judges who had convicted him in the Assize Court and the Assize Court of Appeal, and the former President of the Palermo Court of Appeal (the charges against the latter were subsequently dropped)

It should also be pointed out that in July 1975 the applicant had A. Graziano and another Mafia property developer arrested for, *inter alia*, a series of extortions. The applicant reported both of them on 23 August 1975 for other offences. In November of that year, another operation conducted by the applicant succeeded in routing a Mafia organisation of which all the Graziano brothers were members. In December the applicant recommended imposing a compulsory residence order on A. Graziano, given that he was due for release on the ground that the maximum permitted periods of detention on remand had expired

belonged, the flat in which T Rina had hidden, as described by G Marchese, did actually exist and it had been proved that F Rina had actually had use of it and the investigation into the allegations against the applicant (begun in 1984 following the first statements made by T Buscetta) showed that a number of police officers had stated during the late 1970s and early 1980s, that after the murder of B Giuliano, the head of the Flying Squad who had been very active in the fight against the Mafia, the applicant had become withdrawn, particularly regarding the search for mafiosi fugitives. The judge considered, lastly that the conditions laid down in section 274 of the Code of Criminal Procedure (hereafter called the CCP) applied in this case.

2 The second series of *pentiti* statements

In 1993 and 1994, three other mafiosi implicated the applicant. Their statements may be summarised as follows.

FM Mannoia referred to the applicant during questioning on 24 January 1994, stating that the applicant was a friend of R Riccobono, that he also had contacts with S Bontade and that A Graziano had given him the use of a flat.

S Cancemi claimed that in 1959 the applicant had accelerated S Bontade's application for a licence to carry firearms and that he had also intervened to secure the return of S Bontade's diving licence, which had been withdrawn as a preventive measure.

P Scavuzzo claimed to have seen the applicant in January 1991 in a flat in Palermo in the company of a mafioso. He alleged that the applicant was involved in a valuation by a Swiss art expert of an amphora which P Scavuzzo himself had brought to the premises and which he claimed, was intended for the deputy police commissioner (1).

Additionally on 23 March 1993 R Spatola stated that, on arriving at a restaurant with two other mafiosi the Di Caro brothers, the latter had drawn his attention to the presence of R Riccobono and the applicant together in a small private dining room.

(1) This *pentito* had previous convictions for armed robbery, drug trafficking and delinquency.

3. The applicant's requests for release from detention and the trial before Palermo District Court

The applicant was questioned by the preliminary investigations judge shortly after his arrest on 27 December 1992.

The applicant filed an initial application for release from detention with the Court of Cassation on 3 January 1993. The first ground of this application was that the order of 23 December 1992 failed to give details of the "strong evidence of guilt" against him. The second ground was that, in any event, the *pentiti* statements, referring to events in the distant past which had mainly been related to them by third persons, certainly could not be considered as strong evidence of his guilt. In support of his application the applicant referred to, among other things, the case-law of the Court of Cassation according to which a statement implicating someone does not constitute strong evidence of guilt within the meaning of section 273 CCP unless it is supported by objective evidence. He stressed that G. Mutolo and R. Spatola had never specified what favours he had allegedly done for Mafia leaders and that it was, additionally, impossible to check the veracity of the information provided by G. Mutolo, G. Marchese and T. Buscetta, as the persons from whom they had learnt that information had all died in the meantime. The applicant also observed that in 1985 the investigation into the same allegations made by T. Buscetta in 1984 had been discontinued for want of material corroborative evidence. Lastly, the applicant submitted that none of the conditions laid down in section 274 CCP applied in his case.

On 5 February 1993 the Court of Cassation dismissed his appeal on the ground that the judge had given logical and sufficient reasons for his decision. The court noted the judge's finding that the *pentiti* statements should be considered credible, as they had been made by persons who had occupied key positions within the Mafia and had in the past enabled the investigators to reconstruct that organisation and who should, therefore, be considered as having reliable knowledge of the relationship between the Mafia and the State institutions. Accordingly, given the credibility of the statements of the same *pentiti* in other investigations, those concerning the applicant should also be deemed credible. The Court of Cassation specified in this regard that hearsay evidence is admissible if it emanates from a credible witness, as was the case here. This evidence should also be considered "strong", as the judge had referred to objective corroborative evidence. The Court of Cassation also stressed that the statements in question had been made by different people and concerned different events, which strengthened their credibility. The court therefore concluded that the evidence gathered by the preliminary investigations judge pointed to the probability that the applicant was guilty of the offences with which he had been charged. Furthermore, pursuant to section 275 CCP, the seriousness of those offences raised the rebuttable presumption that the conditions laid down in section 274 (risk of tampering with evidence, of absconding and of re-offending) applied.

On 27 April 1993 the applicant was questioned at his request by the public prosecutor. On an unspecified date, the applicant was transferred to Rome Military Prison.

On 23 July 1993 he submitted a fresh application for release from detention to the preliminary investigations judge and at the same time applied for the charges to be dropped on the grounds that the offence had not been made out. The applicant emphasised in particular that the investigation to date had already provided the investigators with substantial evidence of his innocence. In particular, he had been able to prove that he had played an active role in a number of investigations into the Mafia, as a result of which he had even received death threats, and argued that he had opposed granting T Buscetta day release from prison, fearing that he would take advantage of it to escape and resume his activities, which is what happened. The applicant also maintained that he had never met R. Riccobono and that he had never been a Freemason.

The applicant then claimed that there was no real and current danger justifying his detention, given that *inter alia*, he could never have tampered with the evidence, as all the evidence had already been obtained in the course of the lengthy investigation into the allegations against him. Neither was there any risk of his absconding, since he had already been aware of the statements by the *pentiti* prior to his arrest. Even more absurd the applicant claimed - bearing in mind his career and his role in investigating the Mafia - was the claim that he might continue assisting the Mafia's activities.

This request was dismissed in an order of 24 August 1993. The same judge who had ordered the applicant's arrest held that the *pentiti* statements, far from being refuted, had subsequently been confirmed by

- further detailed statements by R. Spatola which confirmed that the applicant knew R. Riccobono.

the fact that the applicant had allegedly asked another police officer to moderate his behaviour during a search of mafiosi homes,

and the fact that the applicant had tipped off a mafioso, O. Tognoli, regarding an arrest warrant against him, thereby enabling him to flee.

Additionally, the judge considered that the *pentiti*'s decision to co-operate with the judicial authorities could not be motivated by a desire to seek revenge on the applicant, given the sincerity of their co-operation. The judge held, lastly, that in view of the applicant's senior rank in the State institutions, there was a real risk of evidence tampering on his release, in the event that the charges against him should prove to be well founded.

The applicant appealed to the appellate court competent to deal with applications for release. As regards the further statements by R. Spatola concerning his acquaintance with R. Riccobono, he submitted that R. Spatola had started telling the judicial authorities about matters concerning the applicant only a few days before the applicant's arrest, yet Spatola had started co-operating with the judicial authorities in 1989 and was, apparently, unaware of the fact that the applicant had left the Antimafia High Commission in 1985. No more credible, alleged the applicant, was R. Spatola's assertion that he had seen the applicant with R. Riccobono in a well known restaurant in Palermo, given that at the material time Palermo was the scene of a bloody struggle between the various Mafia clans. As regards his instruction to a colleague to moderate his behaviour, this had not been aimed at protecting mafiosi, but at calling a junior police officer to order following a search in which that officer had apparently ill-treated the sons and wife of a fugitive wanted by the police who was not at home on the day of the search.

Palermo District Court dismissed the appeal on 1 October 1993. It held firstly that, in the absence of any fresh evidence, part of the applicant's grounds of appeal was inadmissible as a decision on them had already been given and, secondly, that as regards the new facts emerging from the investigation, these appeared to confirm the seriousness of the evidence against the applicant. The court observed, *inter alia*, that the junior police officer referred to above had confirmed his statement regarding the pressure put on him by the applicant. Even if no account could be taken of the statements by O. Tognoli in Switzerland, as those statements had been related orally by a number of judges and were not contained in any document, all the other evidence against the applicant still justified keeping him in detention on remand. The court therefore upheld the order of 24 August 1993, while declaring that O. Tognoli's evidence was inadmissible. Lastly, the court stressed once again the risk of evidence being tampered with, given the network of information on which the applicant could rely. This had been demonstrated, *inter alia*, by the fact that the applicant had voluntarily reported to the public prosecutor's office on 17 November 1992, although the investigation was supposed still to be covered by the confidentiality of judicial investigations rule. This confirmed that he was aware, not only of the existence of an investigation against him, but also of the nature of the accusations made by G. Mutolo.

The applicant appealed on points of law. He argued *inter alia*, that even if there was a presumption at law that he might commit a further offence, that presumption was rebuttable by contrary evidence, such as existed here.

In a judgment of 13 December 1993, the Court of Cassation dismissed the applicant's appeal. While acknowledging the weakness of the lower courts' reasoning regarding the applicant's dangerousness, the court considered, among other things, that those reasons were nonetheless neither manifestly illogical nor unlawful.

In the meantime Palermo public prosecutor's office had requested, on 7 December 1993, an extension of the applicant's detention on remand, which was due to expire on 24 December 1993. In support of their request, the prosecution had submitted, *inter alia* that bank checks and requests for documents from the Ministry of the Interior and the police authorities were still being made. On 20 December 1993 the applicant opposed the prosecution's request.

On 23 December 1993 the preliminary investigations judge granted the prosecution's request and extended the detention on remand for 60 days. He based his decision on, *inter alia*, the complexity of the investigation, (involving, among other things, an outstanding request for judicial assistance, transcripts of tapped telephone conversations and an analysis of data relating to mobile telephones used by the applicant) and the risks of evidence being tampered with (not only in respect of evidence yet to be obtained, but also that already obtained), of absconding and of the commission of a further offence.

On 7 January 1994 the applicant appealed against the decision extending his detention on remand. He submitted, *inter alia*, that the investigative measures for which an extension of his detention had been requested could easily have been completed earlier and, in any event, before his period of detention expired and that any delay should be attributed to the judicial authorities alone. He also claimed that the court had not in any way proved that there was a real risk of his tampering with the evidence, absconding or reoffending, and that his detention should have been extended only if there were serious investigative requirements making it absolutely necessary. The applicant submitted that there were no such requirements in his case.

On 2 February 1994 Palermo District Court, sitting as an appellate court dealing with detention on remand applications, dismissed the applicant's appeal. The court held that even if the data relating to mobile telephones used by the applicant could have been requested and analysed earlier, given that this data was not requested until 8 November 1993 whereas the applicant had been detained since 24 December 1992, the prosecution could not be criticised in relation to the other investigative measures justifying an extension of the applicant's detention, as these had either been started very early or were particularly complex, and having regard also to the fact that the prosecution enjoyed a certain margin of appreciation in this area. Furthermore, even if the risk of absconding could be discounted, the court considered that there was still a risk that the applicant would reoffend or that evidence would be tampered with, given the extremely sensitive position which he had occupied within the State institutions. The court noted on this point that, after a year's wait, the prosecution had still not obtained the files on, among other things, work done by the applicant for the Ministry of the Interior. Account also had to be taken of the fact that it would be very difficult for the applicant to extricate himself from the Mafia's criminal network.

The applicant appealed on points of law on 1 March 1994, complaining that the court's reasoning in dismissing his appeal was inadequate and illogical. The Court of Cassation dismissed his appeal on 27 May 1994, ruling that, on the facts, there were grave dangers of the kind prescribed by section 274.

The applicant had in the meantime been committed for trial by an order of the preliminary investigations judge and his trial had started on 12 April 1994

On 10 January 1995 the applicant made a further application for release from detention. He submitted, *inter alia*, that there was no real danger of his tampering with the evidence or committing further offences, given the stage which the investigation had reached and the fact that, even supposing that he had had contacts with the Mafia, he would, in any event, have lost them after two years in detention.

His application was dismissed by Palermo District Court on 19 January 1995. The court again held that, given the complexity of the investigation, the applicant's release might interfere with it. He could have used the many contacts and connections he had built up while working at his former very sensitive posts in order to tamper with evidence or exert pressure on witnesses. As to the risk of reoffending, the court emphasised that criminal links with the Mafia are generally long lived, particularly bearing in mind the Mafia's tendency to subjugate its members.

In an order of 14 April 1995, Palermo District Court granted the prosecution's request of 31 March 1995 to suspend the maximum periods of detention on remand for the duration of the trial and deliberations at first instance owing to the complexity of the proceedings, pursuant to section 304(2) of the CCP. The court held that, given the number of hearings, of witness examinations (180) and even examinations of the applicant (13), the prosecution's request appeared justified. As regards the applicant's submission that the proceedings would have been completed earlier if the hearings had been held at more frequent intervals, the court considered that it had to take account of the court's excessive workload and of the fact that at the same time it had had to deal with other cases where the accused were detained on remand.

On 24 April 1995 the applicant appealed against that order, submitting in particular that the provision for suspension of the maximum periods in detention on remand had been adopted in order to meet the requirements of the so-called "maxi-trials", that is trials involving a very large number of defendants. He claimed, however, that, in his case, the fact that it had not been possible to complete the trial before the normal limit on his detention on remand had expired arose for reasons other than the complexity of the proceedings.

Palermo District Court dismissed the applicant's appeal in an order of 22 May 1995, ruling that all the conditions laid down in section 304(2) of the CCP were satisfied in this case, that is, in particular, the complexity of the proceedings (exacerbated by the court's excessive workload) and the continuing applicability of the conditions laid down in section 274 of the CCP.

The applicant did not appeal on points of law against that order. However, on 28 July 1995, he re-applied to Palermo District Court for release from detention, arguing that his detention was no longer necessary for the investigation and that his health was suffering, as shown in a psychiatrist's report.

Palermo District Court granted the application (which was in fact supported by the prosecution) and the applicant was finally released pursuant to a decision of 31 July 1995, after having spent two years and seven months on remand in solitary confinement. The court held in particular:

- that at this stage of the trial, as the oral hearings have been completed, all the prosecution and defence witnesses examined, the documentary evidence obtained and the various confrontations (between co-accused) necessary for the investigation undertaken, there was no risk that the evidence would be tampered with or witnesses procured to give false evidence, contrary to the findings reached in the order of 19 January last, at which time more than a hundred witnesses remained to be examined,
- that the risk of absconding could also be ruled out, both on the ground of the state of health of the applicant, who was suffering from a sufficiently acute form of asthma (brought on by the long detention), and the ground that it was far from certain that a final conviction, which would require precautions to guarantee that he served his sentence, would be secured,
- that any risk of the applicant committing further offences could also be ruled out, owing to his state of health, the long period spent in detention on remand and, lastly, the fact that since his arrest he had ceased performing the functions in connection with which he was accused of having facilitated the Mafia's activities.

The Government submit that the trial progressed at an average rate of two hearings a week. Additionally, a report by the President of the court dated 29 September 1995 shows that, after the maximum period of detention on remand in the proceedings was extended, the court had proposed to hold three hearings a week instead of two, but the applicant's lawyers had refused. The applicant has not denied this. Although it has not been possible to clarify the exact progress of the proceedings, it has, nevertheless, been established that, in the spring of 1995, hearings involving the examination of witnesses were held on 24 March, 2, 5, 12, 16 and 19 May and 14 June. The file also shows that the trial involved a total of more than a hundred hearings and the examination of more than 250 witnesses or persons suspected of offences connected to those with which the applicant was charged.

In a judgment of 5 April 1996, which was filed with the court registry in October 1996, Palermo District Court sentenced the applicant to ten years' imprisonment for Mafia association. The Commission has not yet been provided with the reasons for this judgment. The applicant has apparently appealed.

4 Evidence arising from the investigation and during the trial

During the investigation and the trial further witness and other evidence came to light in addition to the *pentito* statements

a Regarding the statements by G Mutolo

As regards the flat which A Graziano allegedly made available to the applicant the investigation established that the flat in question actually belonged to the property developer of the block in which it was situated, and not to A Graziano, and that it had been rented first to a judge and then to a doctor

G Mutolo subsequently amended his statement and claimed that, between the end of 1975 and the beginning of 1977, A Graziano had intervened to enable the applicant to use the above mentioned flat

As regards the car allegedly given to one of the applicant's mistresses, enquiries made regarding purchases of the same type of car between 1980 and 1982 failed to identify the alleged recipient

b Regarding the statements by R Spatola

On 23 December 1993 this *pentito* changed his statement with regard to seeing the applicant in a restaurant with R Riccobono and specified that the two men were in a raised and isolated part of the restaurant situated between the toilets, and not in a private dining room of the restaurant as he had initially stated

During the trial the Di Caro brothers denied R Spatola's claim. Furthermore, the restaurant owner denied ever having seen the applicant with R Riccobono in his restaurant and added that, in any event, he would never have seated the applicant in the part of the restaurant indicated by the *pentito* in question, i.e. between the toilets

During the investigation it also came to light that the restaurant plan had in the meantime been destroyed

As regards the accusation that the applicant was a Freemason, the investigation did not find anything to confirm this

c Regarding the statements by G Marchese

The investigation established that the police did not find T Riina's hide-out until 1984 and that at the time referred to in G Marchese's statements on this point, no operation against T Riina's hide out had been planned, as the police did not know where it was

d Regarding the statements by FM Mannoia

During the trial it was established that this *pentito* had already been questioned regarding the applicant on 3 April 1993 in the United States of America. On that occasion he had stated that he did not know of any offences committed by the applicant. He attributed the discrepancy between his statement on that occasion and his accusations against the applicant nine months later to the fact that on 3 April 1993 he had been asked the question regarding the applicant very late at night when he was very tired. However, the record of his interview in the United States showed that it had in fact continued for a long time after the question regarding the applicant had been asked.

The prosecution had not attached the record of this first interview to the case file and had confined themselves to producing the interview of January 1994. At the request of the President of the court, the prosecution justified this omission on the grounds that the record of the first interview did not contain any relevant material.

Shortly after the applicant was convicted, a second record of interview was discovered, relating to another interview with the same *pentito* dated 2 April 1993, during which FM Mannoia denied knowing or having heard of the applicant. According to the prosecution this second record of interview was not produced because Caltanissetta public prosecutor's office had never sent it to Palermo public prosecutor's office.

e) Regarding the statements by S Caneimi

It was established that after S Bontade and another mafioso were arrested in 1963 during a police operation directed by the applicant, the latter stated that he deemed it inappropriate for S Bontade, the son of a well known mafioso, to hold a licence to carry firearms. No trace of the renewal of S Bontade's licence was found during the investigation.

It was also established that in 1978 the same mafioso's driving licence was returned to him for work reasons and that this decision was taken by the Prefecture. During the trial, the Prefect (*prefetto*), the Chief of Police (*questore*) and the police officer dealing with the application for the return of the driving licence all gave evidence that the applicant had never intervened on behalf of S Bontade.

f) Regarding the statements by P Scavuzzo

The description of the flat where the meeting regarding the amphora allegedly took place actually corresponded to one of the Secret Service's bases in Palermo, which at the time was under permanent surveillance. No other flat corresponding to this *pentito's* description of the premises was ever identified. Neither was it possible to identify the Swiss at expert

B *Relevant domestic law*

Section 273 (1) of the C C P provides that 'no one shall be remanded in custody without strong evidence of guilt

According to Court of Cassation case-law, the evidence necessary to remand a defendant in custody must indicate a strong probability of guilt. The evidence must therefore be clear and substantial. It can consist of the defendant being implicated by a co-defendant, whose credibility must be assessed overall, in the light of the available evidence (see the Evoli and another judgment of 1 December 1994). The evidence required under section 273 is therefore that which comprises in substance some or all of the future proof and which, although incapable in itself of proving the defendant guilty beyond all doubt, is sufficiently strong to make it foreseeable that, with the subsequent addition of further evidence, it will definitely prove the defendant guilty (see Court of Cassation, Combined Divisions, judgment of 21 April 1995, Costantino and another)

As regards, more specifically, the importance to be attached to accusations by *pentiti*, the Court of Cassation has oscillated between two different approaches. According to the stricter approach, due regard must be had to the need for objective evidence corroborating an accusation, even if at this stage of the proceedings all that needs to be established is probability, rather than guilt. Merely implicating another, even if credible in itself, is therefore insufficient (see Court of Cassation Potenza judgment of 26 January 1994, Mangano judgment of 27 May 1994 and Gallucci judgment of 29 September 1994). Thus, the Court of Cassation has held that where a *pentito* merely recognised the accused from a photograph, this did not constitute objective evidence, as it showed merely that the *pentito* knew the accused (see Court of Cassation, Terlizzi judgment of 13 July 1994). Although it is true that a finding of probable guilt is enough to justify remanding a defendant in custody, it is, nevertheless, necessary to submit statements and accusations by *pentiti* to particularly rigorous scrutiny, as they may hide ulterior motives. The intrinsic credibility of such statements therefore has to be verified (e.g. were they made voluntarily and disinterestedly? Are they precise? Realistic? Logically and internally consistent?) and there needs to be corroborative evidence which, while it can be of any nature or type, must tally with the statements so that a direct and unequivocal link can be established with the offence and the accused (see Court of Cassation, Comisso judgment of 10 March 1994, on the same point, see also Court of Cassation Pimello judgments of 23 April 1994, D'Urso and others judgment of 25 May 1994, and the above-mentioned Costantino and another judgment of 21 April 1995). The Court of Cassation has also held that a mere indication by two *pentiti* that the accused was a mafioso, with no information about his specific role and based on hearsay evidence, could not be considered sufficient (see Court of Cassation, Messina judgment of 27 September 1994). On the same lines, the Court of Cassation has taken pains to specify that a *pentito's* credibility should be

verified in each specific case and in relation to the actual events to which his statements relate, and cannot be taken as proven by the fact that the *pentito* in question has proved himself reliable on other occasions (see Ferrara judgment of 6 July 1994)

In another series of judgments, however, the Court of Cassation has taken a more flexible approach, holding that it is not always necessary to provide objective evidence in order to remand a defendant in custody, as this measure, unlike a criminal conviction, does not require proof of guilt. Accordingly, the need for objective evidence depends on the court's assessment on a case by case basis of the intrinsic credibility of the *pentito* in question. Thus, depending on the case, it may be sufficient to produce evidence confirming the circumstances in which the *pentito* learned of the events described or, alternatively, evidence confirming the circumstances surrounding the events related or, possibly, a second implication, less specific but coming from an intrinsically credible subject (see Court of Cassation, Perri judgment of 27 September 1994, Buzzitta judgment of 28 September 1994 and Cute judgment of 26 October 1994). Thus, even statements by one *pentito* alone can constitute strong evidence if they are shown to be credible and unequivocal on rigorously logical grounds (see Court of Cassation, Mendolia judgment of 7 December 1994), or if the court considers that the *pentito* has not been manipulated (see Court of Cassation, Verde judgment of 2 December 1994). Any contradictions or inconsistencies, however, would make it necessary to produce objective evidence.

The Court of Cassation has also held that objective evidence may be of any type and may take the form of other statements implicating the accused which tally in substance with the statements made by the first accuser or accusers, on condition that the latter statements can be proved not to have been the result of collusion or reciprocal influence (see Court of Cassation, Semilia and another judgment of 17 January 1994, and Greganti judgment of 1 February 1994).

Lastly, the Court of Cassation has held that hearsay evidence can amount to strong evidence, but on condition not only that the intrinsic credibility of the person making the statement has been proved but also that their evidence has been confirmed by objective evidence (see Court of Cassation, Pecoraro and others judgment of 21 October 1994).

Section 274 of the CCP provides that a person may be detained on remand

a) if this is strictly necessary for the purposes of the investigation, on the grounds of a real danger that the evidence will be tampered with or that pressure will be exerted on witnesses

b) if the accused has escaped or there is a real danger of his absconding, on condition that the court considers that, if convicted, he will be liable to a prison sentence of more than two years,

c) where given the specific nature and circumstances of the offence and having regard to the personality of the accused, there is a real risk that he will commit serious offences involving the use of weapons or other means of violence against the person or offences against the constitutional order or offences relating to organised crime or further offences of the same kind as that with which he is charged

Under Section 275(3) of the CCP, as amended by Legislative Decree No 152 of 1991, which became Law No 203 of 1991, and No 292 of 1991, which became Law No 356 of 1991, there is a rebuttable presumption that such a necessity exists with regard to certain particularly serious offences including the offence with which the applicant was charged

Section 303 of the CCP sets forth the maximum periods of detention on remand according to the stage reached in the proceedings. As the applicant is being prosecuted for the offence laid down in section 416 *bis* of the Criminal Code, the periods applicable to him during the proceedings at first instance were as follows

- one year from the beginning of his detention until the decision committing him for trial,
- one year from the beginning of the trial until the conviction at first instance

Section 303 of the CCP provides, in particular, that if before these time periods have elapsed, the decision committing the defendant for trial or the conviction at first instance respectively have still not been pronounced, detention on remand shall cease to be lawful and the accused must be released

Section 477 of the CCP provides, *inter alia* that where the trial cannot be dealt with in a single hearing the President shall order it to continue on the following working day (para 1). Moreover, the court cannot adjourn the proceedings other than on grounds of absolute necessity (*assoluta necessita*) and for a maximum of ten working days (para 2)

On this point, the Court of Cassation has held that the ten day period provided for in section 477 (2) of the CCP is a guideline (*termine di natura ordinatoria*), non-compliance with which does not render the detention unlawful and does not have consequences for the extension of periods of detention on remand pursuant to section 304 (1) of the CCP. While it is true that the court must comply with the time periods laid down in section 477 especially in cases where the length of the trial is set off against the length of the detention, it is also true that the ability to comply with these time-periods is inevitably dictated by the workload of the court concerned, if the court has a heavy workload, the trial cannot always be conducted at the intervals provided for in section 477 of the CCP (see Butera judgment of 18 February 1994)

Sections 304 and 305 of the CCP provide for exceptions to these rules

In particular section 304(2) provides that, in respect of certain offences, including the one provided for in section 416 *bis* of the Criminal Code, the periods laid down in section 303 may be suspended during the hearings or deliberations at first instance or at the appeal stage, if the proceedings turn out to be particularly complex. Section 304 provides that the length of detention in remand must not in any circumstances exceed two thirds of the maximum tariff sentence for the offence with which the defendant is charged or that imposed by the first instance court.

Section 305(2) provides that during the preliminary investigation, the public prosecutor may request an extension of periods of detention on remand which are about to expire, where there is a serious need for precautionary measures which, in particularly complex investigations, make it absolutely necessary to extend the detention on remand." This provision then provides that such an extension can be renewed only once and that, in any event, the periods laid down in section 303 cannot be exceeded by more than half.

Lastly, under section 358 of the CCP, the public prosecutor must also investigate facts and circumstances favourable to the defendant.

COMPLAINTS (Extract)

1 The applicant complains first of all that he was imprisoned in breach of Article 5 para 1 (c) of the Convention. He submits that he was arrested merely on the basis of statements by *pentiti*. The applicant also asserts that, in his case, detention was used for the purpose of making enquiries about him and not as a precautionary measure.

THE LAW (Extract)

1 The applicant complains first of all that he was imprisoned in breach of Article 5 para 1 (c) of the Convention. He submits in particular that he was arrested merely on the basis of statements by *pentiti*.

Article 5 para 1 (c) of the Convention is worded as follows:

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

c) the lawful arrest or detention of a person effective for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so,

“

The Government observe that the applicant was arrested on the basis of statements by *pentiti*, which in accordance with the Court of Cassation's case-law, were deemed to be credible for the following reasons

- these statements were corroborated by *inter alia*, concurring statements by other *pentiti* which could not be deemed to be the result of collusion as they had not been in contact with one another,
- the same *pentiti* had proved themselves reliable in other trials

The Government emphasise further that this evidence was examined on many occasions by several different courts

The Government submit that the Italian courts established that there were risks which, under section 274 of the CCP made it necessary to detain the applicant on remand. It was only at the end of the proceedings that the court could rule out the risk of the applicant absconding, since he no longer had the financial means, or of re-offending, both on grounds of his health and the fact that the most recent offence with which he had been charged dated back to before 1991. The Government recall further that, pursuant to section 273 of the CCP, an individual can be arrested on the basis of strong evidence, which was undoubtedly present here, rather than proof, which is a matter for the trial.

The Government submit further that the risk of tampering with the evidence was confirmed by the fact that the applicant knew of the sources of the evidence against him even before his arrest. Additionally, the unjustified delay by the authorities for which the applicant worked in providing the investigators with the information necessary to conduct their enquiry showed that the applicant could rely on contacts and connections within the circles being investigated. Lastly, the fact that evidence was heard during the proceedings from witnesses who had had very sensitive professional and personal relations with the applicant made it necessary to keep him in detention on remand until the hearing took place.

The applicant claims however, that contrary to the established case law of the Court of Cassation he was arrested on the basis of the statements of four *pentiti* who had had no involvement or contact with him in any of the criminal activities of which he stood accused, the court had found them to be credible witnesses merely on the ground that they had shown themselves to be reliable in previous trials.

In this respect the applicant submits first of all that the evidence is mainly hearsay and often consists of unspecified accusations.

The applicant observes next that the investigators omitted to take account of sometimes evident circumstances and to submit the statements in question to objective scrutiny which would have shown at the outset how manifestly absurd the allegations against him were. Thus, the applicant observes, *inter alia* that evidence was heard from R. Spatola only seven days prior to his arrest and that his statement could not therefore be verified as it should have been. Quite apart from the absurd nature of the allegation that the applicant had lunched with a known mafioso in a restaurant frequented by police officers, no inspection of the premises was undertaken prior to his arrest, which would easily have shown that the private dining room to which the *pentito* first referred did not exist, neither was a plan of the restaurant included in the case file. As regards the statements by S. Cancemi it would have been easy to see that at the time when according to this *pentito*, the applicant allegedly procured a licence to carry weapons for S. Bontade (1959), the applicant had not yet arrived in Palermo, where he took up his post in 1962.

The applicant submits that there were obvious contradictions in the statements which served as the basis for his arrest. Thus it is clear from S. Bontade's alleged statements to T. Buscetta that R. Riccobono was in fact a police informer and not that the applicant was doing the Mafia favours. Furthermore according to G. Mutolo's statements, in 1975 the Mafia had allegedly decided to eliminate the applicant and had instructed A. Graziano to shadow him whereas, according to the same *pentito*, the applicant was at the same time already receiving favours from the Mafia, notably the flat which was allegedly made available to him by A. Graziano himself. The applicant also draws attention to the major contradictions running through all the statements by F.M. Mannoia and the seriousness of the prosecution's failure to exhibit the records of interviews of F.M. Mannoia which were favourable to the applicant. The latter observes further that the absurdity of the allegations against him are only too clear if account is taken of the fact that if the *pentito*'s statements are to be believed, he was doing favours simultaneously for various warring Mafia leaders which would have been suicidal.

The applicant submits further that the possibility of collusion between the *pentiti* cannot be ruled out bearing in mind the community from which they come their criminal history and the fact that in co-operating with the judicial authorities they aim to obtain advantages from the State or even achieve other ends. In this respect, he notes that at the time of his arrest he was in the process of transforming the Secret Service in Sicily from an anti-terrorist organisation into an organisation specialising in combating organised crime. The applicant recalls further that P. Scavuzzo has a previous conviction for defamation and that it has been proven that G. Mutolo whom he had personally prosecuted with particular zeal given his role in murdering a young police officer to whom the applicant was very attached falsely accused the President of Palermo Court of Appeal and other judges.

As regards the requirements of the investigation, the applicant considers that none of the risks which have to be established in order to keep a person in detention on remand existed in his case. He could not in fact have tampered with the evidence or committed further offences, as he had been suspended from his post because of the investigation. Given his conduct, the risk of his absconding should also have been ruled out, since he had voluntarily reported to the public prosecutor's office in order to clarify his position.

The applicant concludes that, in the Italian legal system, statements by a *pentito* are presumed to be credible even where there is no objective corroborative evidence, merely on the ground that the *pentito* has in the past co-operated with the judicial authorities and despite a previous conviction for defamation. It cannot, however, be assumed that a *pentito* who has shown a certain credibility in the past will not be tempted to lie in different circumstances. The credibility of a *pentito*, the applicant submits, should therefore be verified in every case in relation to each specific statement, particularly where serious allegations are made against a senior police officer. This was not done in his case.

The Commission recalls that the reasonable suspicion referred to in Article 5 para. 1 (c) of the Convention does not mean that the suspected person's guilt must at that stage be established and proven, and it cannot be required in order to justify arrest and detention on remand that the commission of the offence with which the person concerned is charged has been established. It is precisely the purpose of the official investigation and detention that the reality and nature of the offences laid against the accused should be definitely proved (see No. 10803/84, Dec. 16.12.87, D.R. 54, p. 35, at p. 41). The suspicions must also be reasonable (*ibid.*, p. 42). It is precisely from this standpoint that the question of the *pentiti* should be considered.

The Commission observes that the co-operation of *pentiti* is a very important weapon in the Italian authorities' fight against the Mafia. The use of their statements does, however, raise a certain number of delicate issues, as by their very nature such statements are open to manipulation and may be made purely in order to obtain the advantages which Italian law grants to *pentiti*, or for personal revenge (the fact that the statements made by certain *pentiti* have led to their conviction for defamation should not be overlooked). The at times ambiguous nature of these statements and the risk that an individual may be implicated and arrested on the basis of unverified and not necessarily disinterested allegations made by persons who have often already been convicted, should not therefore be underestimated.

The Commission has found factors in this case which raise significant doubts, *inter alia*

- some of the statements implicating the applicant are clearly contradictory.

- the statements by certain *pentiti* refer to facts of which they have no direct knowledge and of which they were apprised by persons who have died in the meantime;

it would have been reasonable for the investigators to investigate further factual evidence in order to verify the credibility of some of the serious allegations against the applicant (e.g. with respect to the restaurant in which the latter was allegedly seen in the company of a known mafioso, or regarding the licence to carry arms and the driving licence which another mafioso allegedly obtained through the applicant's intervention);

- the prosecution appear to have deliberately ignored matters favourable to the applicant (such as the records of interview of the *pentito* FM Mannoia dated 2 and 3 April 1993).

The Commission considers, nevertheless, that the national authorities should enjoy a wide margin of appreciation in this area. Short of manifestly unreasonable or arbitrary conclusions drawn by the competent authorities from evidence in their possession in order to justify a suspect's arrest, which, despite certain reservations, can be ruled out in this case, it is in the first place for the national authorities to assess the credibility of statements by *pentiti*. Moreover, a point which should not be underestimated is that the *pentiti* statements on which the charges against the applicant are based were examined on several occasions by three levels of the Italian court system, which repeatedly concluded that they were serious and credible.

The Commission therefore considers that this part of the application must be rejected as manifestly ill-founded, within the meaning of Article 27 para. 2 of the Convention.