



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

FIRST SECTION

CASE OF MATTOCCIA v. ITALY

(Application no. 23969/94)

JUDGMENT

STRASBOURG

25 July 2000

In the case of Mattoccia v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mrs E. PALM, *President*,

Mrs W. THOMASSEN,

Mr R. TÜRMESEN,

Mr J. CASADEVALL,

Mr T. PANȚIRU,

Mr R. MARUSTE, *judges*,

Mr C. RUSSO, *ad hoc judge*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 7 March and 4 July 2000,

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

PROCEDURE

1. The case was referred to the Court in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the Italian Government ("the Government") on 30 December 1998 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention). It originated in an application (no. 23969/94) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention by an Italian national, Mr Massimiliano Mattoccia ("the applicant"), on 22 May 1993.

2. The applicant was granted legal aid. Having originally been designated before the Commission by the initials M.M., the applicant subsequently agreed to the disclosure of his name.

3. The applicant alleged a violation of his right to a fair hearing within a reasonable time.

4. The application was declared partly admissible by the Commission on 21 May 1997. In its report of 17 September 1998 (former Article 31 of the Convention), the Commission expressed the opinion that there had been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings (unanimously) and that there had been a violation of Article 6 §§ 1 and 3 as regards the fairness of the proceedings (by twenty-five votes to seven)¹.

1. *Note by the Registry*. The report is obtainable from the Registry.

5. A panel of the Grand Chamber decided on 14 January 1999 that the case should be dealt with by a Chamber constituted within one of the Sections of the Court.

6. In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the case to the First Section. Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr B. Conforti, the judge elected in respect of Italy, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr C. Russo to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 7 March 2000 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*

Mr V. ESPOSITO, *magistrato*, on secondment
to the Diplomatic Legal Service,
Ministry of Foreign Affairs, *Co-Agent*;

(b) *for the applicant*

Ms P. PAGLIARELLA, of the Frosinone Bar, *Counsel*.

The Court heard addresses by them.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. In 1985 the applicant was assigned by his employer to work as a bus driver for a school in Rome that numbered disabled children among its pupils; his job consisted of picking the disabled children up from home in the morning to take them to school and driving them home in the afternoon. He was always accompanied by a social worker.

10. On 22 November 1985 the mother of R., a mentally disabled girl born in 1964 who attended the school, requested the help of a social worker, C.T., as she suspected that R. had been raped or sodomised at school by a

person named “Massimo”. Since 11 November 1985 R. had refused to go back to school. On 23 November 1985 her mother, accompanied by C.T., took R. to see a gynaecologist. The gynaecologist did not examine R. but, on learning from her mother what had happened, advised that she be examined by a doctor from the Department of Forensic Medicine. On 25 November, therefore, R. underwent a medical examination; however, the doctor found no traces, recent or old, of rape or sodomy.

11. On 22 November 1985 R.'s mother also requested the headteacher of the school to ask an employee called “Massimo” for an explanation, but the headteacher refused.

12. On the same day the mother lodged a criminal complaint against “a person named Massimo”. She informed the Rome police that about twenty days earlier she had noticed that her daughter seemed to be in pain and kept going to the toilet. R.'s explanation had been: “Massimo did it” (*“È stato Massimo”*). Some days later, the mother had learned from a friend of hers, C.D., that one day she had been told by R. that a certain Massimo had forced her to have anal intercourse in the school lavatory.

13. The police interrogated R. in her mother's presence. The girl said that about a month earlier, while she was in the school lavatory on the second floor, “Massimo” had told her to lie down on a small bed and had had anal intercourse with her.

14. The police then interrogated C.D., who declared that about a month earlier she had been in the mother's flat and had noticed that R. was very quiet. After some initial hesitation, R. had confessed to her in the presence of her sister, A., and of another friend, M.P., that “Massimo” had indecently assaulted her, causing her pain; he had also threatened her.

15. The police then questioned the manager of the company in charge of organising the school bus service. He identified the applicant as the relevant driver.

16. On 14 December 1985 the police lodged a criminal complaint against the applicant with the Rome public prosecutor. A preliminary investigation was started.

17. On 29 January 1986 the public prosecutor summonsed R., her mother, C.D. and C.T., to appear before her on 13 February 1986 to give witness statements. R.'s mother stated that the reason she had not reported the rape to the authorities until about fifteen days later was that her daughter had spoken to a friend of hers and not to her directly, and her own father had died during that period. She said, however, that she had noted that her daughter was in pain and had given her some painkillers. She said that her daughter had refused to return to school after the rape and that she had not sent her back to school. She added, however, that for about a week after the rape, her daughter “would return home and, without saying a word or having anything to eat, go straight to bed”. She said that she had not seen “Massimo” after that day because he had immediately asked to be replaced

by another driver. She added that she herself had seen a bed in the school lavatory on the second floor.

18. On 17 February 1986 the applicant received judicial notification (*comunicazione giudiziaria*) of the allegation that he had committed an “offence under Article 519 of the Criminal Code in that he forced R., who [was] mentally disabled, to have sexual intercourse with him in Rome, in November 1985” (“*del reato di cui all'articolo 519 c.p. per aver costretto R. malata di mente a congiungersi carnalmente con lui. In Roma, nel novembre 1985*”). On 19 February 1986 the applicant appointed his defence lawyer.

19. On 11 April 1986 the public prosecutor summonsed the headteacher to appear on 29 April 1986 for questioning as a witness. The headteacher acknowledged that the victim's mother had reported the rape to her, but argued that she did not believe the allegation to be plausible, as there were no beds in the lavatory and all children were accompanied when they went to the toilet or to the therapy rooms on the third floor (where there were beds). She added that the applicant did not normally enter the school and would have had no reason for being on the third floor. He had been assigned to a new post in January 1986.

20. On 30 September 1986 the applicant was interviewed by the Latina public prosecutor in his counsel's presence. He claimed that he was innocent. He underlined that there had always been at least twenty people on the bus, and that he had always met R. in the social worker's presence.

21. On 23 October 1986 the applicant was committed for trial before the Rome Court. He was indicted for “an offence under Article 519 of the Criminal Code, in that he [had] forced R., who [was] mentally disabled, to have sexual intercourse with him in Rome, in November 1985”.

22. On 25 September 1989 the applicant's counsel requested access to the prosecution file.

23. Following a request made by the applicant on 25 November 1989, the Rome Court fixed the first hearing in the case for 19 May 1990. At the hearing the applicant protested his innocence, and repeated that he had never been alone with R. because there had always been some twenty people on the bus, including the social worker. He explained that, as the bus driver, his duties ended when he arrived at the school. He would then return to the school at 4 p.m. to pick the children up and drive them home. He said he was aware of what had been said in the criminal complaint but argued that he never entered the school as it was prohibited. He added that after taking the children to school in the morning he did other work for his employer, which would usually be to drive tourists around.

24. R. was unable to give evidence at first, as she appeared very disturbed and said she could not remember anything. However, she identified the applicant as the bus driver.

25. R.'s mother was questioned. She said that she did not know the exact date of the events, and added that she had not reported the rape immediately because of her father's death during that same period. She said that she knew that the rape had taken place on the third floor, in the therapy room where there were beds. Replying to a question from the applicant's lawyer, she said that, so far as she was aware, the children were accompanied when they went to the therapy rooms on the third floor.

26. C.T., the social worker, was also questioned. She said that in the afternoon of 22 November 1985 R.'s mother had come to see her and had told her that R. had returned from school upset and bleeding. C.T. had told her to come back the following day with R. The next day, she had taken R. to the gynaecologist, who had not examined her but, on learning from R.'s mother what had happened, had advised that R. should be examined by a doctor from the Department of Forensic Medicine. On 25 November, therefore, C.T. had accompanied R. to another doctor, who had examined her and issued a certificate; the doctor had advised her to inform the police. C.T. said that R. had referred to the rapist as "Massimiliano" or "the school bus driver". She said that R. had told her that she had left her classroom to go to another classroom and had been grabbed by "Massimiliano" in the corridor. He had pushed her into a room where there was a bed or table and had attempted to have anal intercourse. R. had felt severe pain and had cried out for help but nobody had heard her. "Massimiliano" had threatened to kill her if she said anything about what had happened.

27. The next witness was C.D. She repeated what she had told the police, and explained that R. had told her that the rape had been committed on the third floor, on 21 November 1985, but had not said at what time.

28. N.D., the headteacher of the school, said in evidence that R.'s classroom was on the first floor. The bus drivers did not enter the school as they were forbidden to do so by school regulations, although the applicant had sometimes gone to her office to use the telephone. Two caretakers supervised access to the classroom area. She added that children were accompanied to the therapy rooms on the third floor by one of the three assistants. The applicant had worked for the school until January 1986.

29. Finally, R. gave her evidence with the help of the social worker. She said that she had gone to the bathroom to wash her hands and on her way back to her classroom had been caught by the applicant. This had happened on the same floor as her classroom; she had not gone to the upper floors. It had been in the morning. R. added that she could not remember whether she had returned to her classroom and could not recall which teacher was present that day.

30. The court adjourned the case to 12 June 1990, in order to hear the evidence of two school caretakers to whom the headteacher had referred and of the teacher who had been at the school on 21 November 1985. It also ordered production of the school register.

31. At the hearing on 12 June 1990 the caretakers were heard. E.F., the caretaker in the girls' section of the school, said that she remained in the corridors during lessons, as teachers would call her if a child had to leave the classroom for any reason, for example to go to the toilet. She said that children were accompanied to and from the therapy rooms by an assistant. She remembered seeing the bus drivers go to the headteacher's office on occasions, but they never entered the corridors, where there was a sign warning that access was prohibited. The caretakers stood by a table in front of the headteacher's office at the entrance to the corridors that led to the classrooms, so that they could control access. E.F. added that there was a separate entrance to the third floor from the school clinic, but it was locked and was only opened at the request of the school administrators; she excluded any possibility of complicity between the bus drivers and the administrators. She said that she had never seen the bus drivers go to the upper floors by the internal stairs, which were in front of the caretakers' table, and that she did not recall having seen R. return to her classroom crying or looking upset.

32. V.C., the other caretaker, said that he had never seen the bus drivers enter the corridors, as they had no right of access; they would wait outside the school until 2.30 p.m., when they would drive the children home. There had been occasions when he had been sent by the headteacher to fetch one or other of the drivers to answer phone calls from their employer.

33. The court noted from the school register that R. had been absent from the school since 11 November 1985; on 14 March 1986 she had left the school.

34. G.S., R.'s teacher, informed the court in evidence that she vaguely remembered R. She said that she had never been told officially why she had stopped attending the school, but had heard rumours. She stated that she had never seen the bus drivers in the corridors. When a pupil needed to leave the classroom to go to the toilet, she would call the caretaker who would accompany the pupil there and back. When disabled pupils had to attend therapy, they would be accompanied by the assistants.

35. By a judgment delivered on 12 June 1990, the Rome Court convicted the applicant of rape and sentenced him to three years' imprisonment. It also barred him from employment in public service for five years. On 14 June 1990 the applicant gave notice of appeal against the judgment. The judgment was filed with the registry on 27 June 1990.

36. In its judgment the court underlined that, although R. was mentally disabled and therefore seemed not fully to comprehend her own evidence, she had been precise and detailed enough to be credible and felt no hatred towards the applicant or rancour against him. As to the lack of medical evidence of the rape, the court considered that, since R. had not been examined until at least two weeks after the rape, the lesions had already healed and no marks remained. The court held that the witnesses who had

testified against the applicant, particularly C.D. and C.T., were fully credible and felt no resentment against him. As for the time of the rape, the court held that it had been committed on the day R. had spoken to C.D., namely two weeks before 25 November 1985 and immediately before 11 November 1985, the date R. had stopped attending school, presumably as a consequence of the rape itself.

37. Having established that there had been a rape, the court considered it proved that the guilty party was the applicant. R. had identified him, and it was common for persons named “Massimiliano” to be referred to as “Massimo”. The court found that the applicant had had access to the school, despite the headteacher's and the caretakers' statements to the contrary: they had contradicted themselves on a number of issues and their evidence was not credible in that they appeared to have an interest in protecting the school's reputation. It was reasonable to assume that the employer had contacts through its drivers with the school administrators, who worked in an office on the third floor. It was plausible that the applicant had in fact committed the crime, and the exact place the rape had been committed – that is to say the precise floor – was immaterial, once it had been established that (a) it had been committed inside the building and (b) the applicant had access to the building. As to the fact that the applicant had stated that he used to leave the school after taking the pupils in the morning and returned in the afternoon, one of the caretakers had on the contrary stated that the bus drivers remained outside the school. The court further found that, while it was true that certain severely disabled pupils were accompanied by either a caretaker or an assistant when they left the school, there must have been frequent occasions when R. was allowed to go unaccompanied, as she was able to walk and could move around unassisted.

38. On 30 July 1990 the applicant filed the grounds for the appeal with the Rome Court of Appeal. He argued that the particulars of the offence charged had been too vague to allow him to defend himself, there being no exact indication of the place and time of the rape, and those issues had not been elucidated during the trial. He therefore claimed that the proceedings were null and void, on the ground that his defence rights had been violated. The applicant also emphasised that the witnesses had admitted that R. was in love with him, and the fact that that love was unreciprocated could in his opinion explain a feeling of rancour on her part. He also requested that the evidence of a witness on his behalf, namely his employer at the time of the rape, be heard so that further details about his duties as the school bus driver could be obtained.

39. In a judgment of 30 April 1991, filed with the registry on 20 May 1991, the Court of Appeal upheld the first-instance judgment. After re-examining the evidence gathered at the trial and considering it unnecessary to examine the applicant's employer, the Court of Appeal came to the conclusion that the applicant was guilty. As to the alleged vagueness of the

charge, the court considered that the fact that it was impossible to specify the exact time and place of the rape did not render the charge itself null and void, as the particulars (it alleged that the rape had taken place in the school in November 1985) it contained were sufficient to allow the defence to prepare its case.

The Court of Appeal found, in particular, that the assertion – favourable to the applicant – that disabled children were always accompanied to the toilet and the therapy rooms was general and could not counter the precise description of the facts by R. As to the absence of beds in the lavatories, it considered that, given that there were beds on other floors in the school, the possibility that R., who trusted the applicant, had followed him to other rooms on the school premises could not be excluded. It further held, like the court of first instance, that it was unnecessary to establish where exactly on the school premises the rape had been committed. As to the absence of rancour towards the applicant, it considered that the fact that R. was probably in love with the applicant was irrelevant. Indeed, that circumstance could explain why R. had followed the applicant to an isolated part of the building. As to the date of the rape, the Court of Appeal considered that the evidence proved that it had been committed on or about 11 November 1985, before R. stopped attending the school. C.T., who said that the rape had been committed on 25 November, had probably got the date of the rape confused with the date of the medical examination. The fact that there had been no trace of any lesions was due, in its opinion, to the time that had elapsed between the rape and the medical examination and was not sufficient to exclude the possibility that there had been a rape “given that R. had cried out”.

40. The applicant was notified that the text of the judgment had been deposited on 23 June 1992.

41. On 13 July 1992 the applicant lodged an appeal on points of law. He reiterated, in particular, that the charge was too vague to allow him to defend himself and claimed that the Court of Appeal had not given any grounds for considering that there was sufficient evidence against him to convict. On the contrary, the evidence was hearsay, weak and uncorroborated. The courts below had assumed that the witnesses who had given evidence in his favour were biased, but there was no concrete ground for that assumption and indeed they had confirmed the applicant's statements. The Court of Appeal had not believed the evidence that all the children were accompanied to the toilets, but there was nothing to indicate that that evidence, confirmed by all the witnesses whose testimony was favourable to the applicant and even by R., was untrue. Nor was it irrelevant to know where the rape had been committed: in the second-floor lavatories, as stated by the victim and the witnesses, on the ground floor where there were no beds, or in the therapy rooms on the third floor. The applicant considered that the courts below had not examined the contradictions in R.'s

statements carefully. As to the date of the rape, the applicant argued that the witnesses had consistently indicated that it had been committed on 21 November and not, as held by the courts below, on 11 November 1985. Indeed, the rape had been committed, if at all, on 21 November by which time R. had already stopped attending the school and the applicant could not be a legitimate suspect. R. had probably accused him because she was in love with him and had been rejected; the courts below had unjustly refused to take that factor into consideration. The applicant finally complained that no reasons had been given for refusing to examine another witness on his behalf.

42. In a judgment of 17 June 1993, which was filed with the registry on 19 July 1993, the Court of Cassation rejected the applicant's appeal as it was manifestly ill-founded and had been lodged by a lawyer who had no rights of audience before the Court of Cassation. The Court of Cassation, stressing that its role was not to review the merits of the decision taken by the courts below, held, in particular, that the charge brought against the applicant was not vague, as it contained all the details that were necessary for the applicant to defend himself. It considered that the lack of details regarding exactly when and where the rape had been committed was a consequence of the initial imprecision of the charge (*originaria imprecisione dell'accusa*) that had been caused by R.'s mental disability. The Court of Cassation found, however, that that initial imprecision had been remedied in the course of the trial through further evidence in the form of the statements of the three main prosecution witnesses. As to the date of the rape, it was logical to deduce that it was immediately prior to R.'s refusal to go to school. C.T. had made a justifiable mistake, and R.'s mother was credible and ought to be believed.

43. As to the refusal to hear the evidence of a witness on appeal, the Court of Cassation found that the Court of Appeal had implicitly given reasons therefor, namely that the evidence already gathered before the Rome Court was sufficient.

44. The applicant served his sentence in Latina Prison. On 25 March 1994 he was released and remained on probation (*affidamento in prova al servizio sociale*) until 26 October 1994.

II. RELEVANT DOMESTIC LAW

45. Article 304 § 1 of the former Code of Criminal Procedure provided:

“Upon taking the first step in an investigation, the investigating judge shall give everyone who might have an interest as a private party judicial notification [*comunicazione giudiziaria*] stating the legal provisions alleged to have been breached and the date of the offence of which they are accused, and informing them that they may appoint defence counsel.”

46. Article 304 *bis* provided that the defence lawyer was entitled to be present when the accused was interrogated by the public prosecutor or by

the judge, and also during appointments with expert witnesses and searches of residential premises and at identification parades.

47. Article 304 *quater* provided that the documents and records relating to investigative measures which the defence lawyer was entitled to witness, and the records of seizures, searches and body searches, were to be filed with the registry on the day following the relevant measure. The defence lawyer was entitled to examine the relevant documents and to take copies within five days and to receive a copy of the warrant of arrest or of the summons to appear before the judge.

The records of the examination of witnesses during the investigation were not to be filed with the registry and were thus not made available to the defence lawyer immediately after they had been compiled.

48. Under Articles 369 et seq. of the former Code of Criminal Procedure, once the investigation had been completed the investigating judge was required to lodge the case file with the registry and to inform the public prosecutor, who could ask for further investigative measures to be taken. If the public prosecutor was satisfied with the scope of the investigation, the records and documents of the case were filed with the registry, and the defence lawyer was allowed to examine the entire case file, to take copies and to file requests or submissions within five days of being informed that the case file had been lodged with the registry.

49. By Article 374 of the former Code of Criminal Procedure, committal orders were required to state:

- (i) the description of the material facts;
- (ii) the legal qualification of those facts;
- (iii) any aggravating circumstances;
- (iv) any circumstances which might make security measures necessary.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION AS REGARDS THE FAIRNESS OF THE PROCEEDINGS

50. The applicant submitted that he had not been afforded an opportunity to defend himself properly in the criminal proceedings that had been brought against him and thus argued that there had been a violation of Article 6 §§ 1 and 3 of the Convention, the relevant parts of which provide:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

...”

A. Submissions made before the Court

51. The applicant submitted that the judicial notification that had been sent to him on 17 February 1986 was vague and imprecise in that the time and place of the offence were not specified. Its vagueness and imprecision had adversely affected his right to defend himself, since he had been unable to reach a considered decision as to what line of defence to adopt. Contrary to what had been alleged by the Government, the applicant had not been in a position to prepare his defence or to request specific details of the charge against him on 17 February 1986, as in practice, under the applicable provisions, defence counsel was permitted to examine only those documents which related to the stages of the proceedings at which he was entitled to be present. As to the documents on which the charge was based, namely the scant evidence provided by the victim and her mother, the applicant's lawyer had not had access to them. For the same reason, the applicant's lawyer could not be criticised for not having sought the available information in order to confront the applicant with it when questioned on 30 September 1986. Furthermore, the record of the applicant's examination on that date could not faithfully reproduce all of the measures taken by his counsel in his defence.

52. The vagueness of the charge was moreover clearly apparent from the wording of the summons, in which the time and place of the rape were not stated. In particular, the prosecuting authorities had known from the outset that the rape had taken place, according to the victim, “in the lavatories on the second floor of the school”, but had not set that information out in the charge, which vaguely stated “in Rome”. When questioned on 30 September 1986 the applicant stated that he had never been alone with the victim on the bus and had given no indication that he might have entered the school. Nor had the prosecutor informed him that the victim had said that the rape had occurred in the school and not in the bus, or sought to verify whether drivers could enter the school building by asking the applicant directly. Only subsequently, in the course of the trial, had new details emerged about where the offence was alleged to have taken place, that is to say, inside the school. Even assuming that the imprecision of the charge had been remedied

before the trial court at a later stage of the proceedings, the applicant's defence rights had been violated.

53. As regards the refusal to hear a further witness on appeal, the applicant argued that the witness concerned could have provided more detailed information about the applicant's duties as a driver and his work schedule in November 1985. This evidence had been necessary to the applicant's defence in order to dispose of the uncertainties which both the Rome Court in its reasoning and, at times, the public prosecutor in the course of the investigation had allowed to subsist.

54. The applicant contended furthermore that the Court of Cassation had erred in saying that the initial imprecision of the charge had been a consequence of the victim's mental disability and that the defect had been remedied by the testimony of the three main prosecution witnesses: their testimony, which had been hearsay, had in fact been even more contradictory than the victim's and indeed the courts had not accepted their version of the facts. Further, the victim's mental state should have been determined by an expert since she had been absent from school on several occasions and was making little progress, while her behavioural reports raised many questions about her personality.

55. The Government argued that it had been clear from the beginning, that is to say since 25 November 1985, that the rape was alleged to have been committed inside the school, as that had been the evidence of both the victim and her mother. The applicant had known of the existence of charges against him since 17 February 1986, when he was informed of the offence, the date (November 1985) and the name of the victim, and had thus been given an opportunity to prepare his defence. He could have made an application for witnesses in his favour to be heard immediately at that stage. After appointing defence counsel, both he and his counsel had failed to seek further details about the charge. Nor had they done so at the summary interrogation on 30 September 1986. After his committal for trial on 23 October 1986 the applicant could have gained access to the prosecution file and thus learnt that he was accused of rape inside the school. He could have summonsed his employer to appear as a witness at the trial, without waiting until the appeal stage to do so. In the course of the trial, the applicant had been informed of all new evidence as it came to light and had thus been afforded an opportunity to defend himself adequately.

56. As to the refusal to hear a witness on appeal, the Government observed that the question of the admissibility and assessment of evidence and of its probative value was a matter for the national courts to decide. In the present case, the Court of Cassation had carefully examined the assessment of the evidence by the courts below and had concluded that they had not overstepped the bounds of their discretion in assessing the evidence or established the facts in an arbitrary manner. There were no exceptional circumstances in the case which could prompt the Court to conclude that the

refusal to hear a witness for the applicant had breached Article 6 of the Convention.

57. The Commission considered that the original indictment was indeed very vague as was the general evidence surrounding the information given in it: it mentioned only Rome, although it had been known from the beginning that the offence had allegedly been committed on the school premises. Moreover, there was nothing to indicate that the applicant had ever been put on notice that, contrary to the basis on which he had built his initial defence, the rape was not alleged to have been committed in the bus. This had become clear at the trial, but while the applicant had been informed of those details as they emerged, there had only been two hearings and the applicant had been questioned only once. The appellate court had refused to hear evidence from the applicant's employer about his duties and work schedule, and although it was not the Commission's task to rule on the evidential value of that testimony, it did not immediately appear to be manifestly devoid of merit. The Court of Cassation had considered that the victim's allegations had been corroborated by the evidence of the three main witnesses against the applicant, but in fact their evidence was contradictory and in any case only hearsay. The Commission concluded therefore that the proceedings as a whole had not been fair.

B. The Court's assessment

58. The Court reiterates that the requirements of paragraph 3 of Article 6 represent particular aspects of the right to a fair trial guaranteed in paragraph 1. The Court will therefore examine the present case from the point of view of these two provisions taken together (see, among other authorities, the *T. v. Italy* judgment of 12 October 1992, Series A no. 245-C, p. 41, § 25).

59. Paragraph 3 (a) of Article 6 points to the need for special attention to be paid to the notification of the “accusation” to the defendant; particulars of the offence play a crucial role in the criminal process, in that it is from the moment of their service that the suspect is formally put on notice of the factual and legal basis of the charges against him (see, *mutatis mutandis*, the *Kamasinski v. Austria* judgment of 19 December 1989, Series A no. 168, pp. 36-37, § 79). The accused must be made aware “promptly” and “in detail” of the cause of the accusation, that is, the material facts alleged against him which are at the basis of the accusation, and of the nature of the accusation, namely, the legal qualification of these material facts. The Court considers that in criminal matters the provision of full, detailed information concerning the charges against a defendant is an essential prerequisite for ensuring that the proceedings are fair (see, *mutatis mutandis*, *Pélissier and Sassi v. France* [GC], no. 25444/94, §§ 51-52, ECHR 1999-II).

60. While the extent of the “detailed” information referred to in this provision varies depending on the particular circumstances of each case, the accused must at any rate be provided with sufficient information as is necessary to understand fully the extent of the charges against him with a view to preparing an adequate defence.

In this respect, the adequacy of the information must be assessed in relation to sub-paragraph (b) of paragraph 3 of Article 6, which confers on everyone the right to have adequate time and facilities for the preparation of their defence, and in the light of the more general right to a fair hearing embodied in paragraph 1 of Article 6 (see *Pélissier and Sassi* cited above, § 54).

61. As concerns the changes in the accusation, including the changes in its “cause”, the accused must be duly and fully informed thereof and must be provided with adequate time and facilities to react to them and organise his defence on the basis of any new information or allegation.

62. In the present case, the Court's task is not to express a view as to whether the evidence against the applicant was correctly admitted and assessed by the judges, but rather to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, were fair, as required by Article 6 § 1.

63. The Court observes that at the preliminary stage the applicant was informed that he was accused of raping R. “in Rome, in November 1985” (see paragraph 18 above). In the indictment of 23 October 1986 no further details had been added (see paragraph 21 above). At that time, the prosecuting authorities had been told that the rape had been committed at the end of October 1985 (see paragraphs 12-14 above) or on or about 10 November 1985 (see paragraph 17 above). They also knew that it was alleged to have been committed in the lavatory on the second floor (see paragraphs 12, 13 and 17 above). However, they did not convey all the available information to the applicant; nor did they do so at his interview on 30 September 1986, even though he appeared to have adopted a line of defence which was manifestly inadequate: he had not addressed the question of whether he had access to the school at all (see paragraph 20 above).

64. At that stage, the applicant had not and could not have acquainted himself with the prosecution file, as access to the file only became possible after the end of the preliminary investigation shortly before 23 October 1986 (see paragraph 48 above). In fact, the applicant only sought access to the file in September 1989 (see paragraph 22 above).

65. The Government argued that an earlier request to that effect would have allowed the applicant to have at his disposal of all the necessary information at the trial. In the Court's view, even though the applicant could have sought access to the prosecution file in due time, that did not release the prosecution from its obligation to inform the accused promptly and in detail of the full accusation against him. That duty rests entirely on the

prosecuting authority's shoulders and cannot be complied with passively by making information available without bringing it to the attention of the defence. Moreover, no explanation has been provided as to why such essential details concerning when and where the rape took place were not communicated to the defence at the outset.

66. In any event, the Court observes that at the first hearing before the trial court on 19 May 1989 the prosecution witnesses changed their evidence regarding the time of the rape (which then became 21 November 1985 – see paragraphs 27 and 30 above) and the place it was committed (which in the new version was the therapy rooms on the third floor – see paragraph 27 above – or “a room in which there is a bed or table” on the first floor – see paragraph 26 above). Moreover, at the second hearing, which was held on 12 June 1990, that is to say less than one month later, the trial court found out that R. had stopped attending school on 11 November 1985 (see paragraph 33 above). The witnesses summoned by the court confirmed the applicant's claim that he would normally not enter the school and could not go up to the therapy rooms on the third floor (see paragraphs 31-32 above). In the judgment delivered the same day, the court held that the rape had been committed immediately before 11 November 1985, inside the school – the exact location being irrelevant (see paragraph 37 above). The trial court also held that the testimony in the applicant's favour was not credible.

67. Given that the “cause” of the accusation had changed at a stage in the proceedings – the hearing on 12 June 1990 – when it was no longer possible for the applicant to react to it, it was reasonable to expect allowances to be made by the trial court for the difficulties caused to the defence, which was suddenly confronted with yet another version of events. However, no such allowances were made.

68. On receipt of the text of the judgment, the applicant was thus faced with a different “cause” of the accusation from that which had been presented at trial: he was now alleged to have entered the school on 10 November 1985, gained access to the therapy rooms on the third floor and raped R. Furthermore, none of the testimony on his behalf had been regarded as credible. At that stage, the applicant's only remedy was to seek to adduce new evidence on appeal.

69. Indeed, the applicant requested the Court of Appeal to hear evidence from his employer, who could have clarified his work schedule and could have provided testimony as to whether the bus drivers usually waited outside the school until the afternoon or performed other tasks elsewhere (see paragraphs 23, 32 and 37 above), and further whether the bus drivers had contacts with the school administrators on behalf of the company (see paragraph 31 and, *contra*, paragraph 37 above). The Court of Appeal briefly ruled that the employer's testimony was unnecessary (see paragraph 39 above) and the Court of Cassation considered that the mere assertion by the

Court of Appeal that the evidence already gathered at first instance was sufficient did not need any further explanation.

70. The Court disagrees. It cannot see how the evidence gathered at trial could be sufficient, given that the “cause” of the accusation had been changed at a stage – the hearing on 12 June 1990 – when the applicant could no longer react to it other than on appeal.

71. In conclusion, the Court is conscious of the fact that rape trials raise very sensitive and important issues of great concern to society and that cases concerning the very young or the mentally disabled often present the prosecuting authorities and the courts with serious evidential difficulties in the course of the proceedings. It considers, however, that in the present case the defence was confronted with exceptional difficulties. Given that the information contained in the accusation was characterised by vagueness as to essential details concerning time and place, was repeatedly contradicted and amended in the course of the trial, and in view of the lengthy period that had elapsed between the committal for trial and the trial itself (more than three and a half years) compared to the speed with which the trial was conducted (less than one month), fairness required that the applicant should have been afforded greater opportunity and facilities to defend himself in a practical and effective manner, for example by calling witnesses to establish an alibi.

72. Against this background, the Court finds that the applicant's right to be informed in detail of the nature and cause of the accusation against him and his right to have adequate time and facilities for the preparation of his defence were infringed.

Consequently, there has been a violation of paragraph 3, sub-paragraphs (a) and (b) of Article 6 of the Convention, taken in conjunction with paragraph 1 of that Article.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF THE PROCEEDINGS

73. The applicant maintained that, contrary to Article 6 § 1 of the Convention, which provides that “in the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time ...”, the criminal proceedings brought against him had been unduly long.

74. The Commission agreed with the applicant's submissions. The Government conceded that the proceedings had exceeded the reasonable time required by Article 6 § 1.

A. Period to be taken into consideration

75. The Court notes that the period to be taken into consideration in determining whether the proceedings satisfied the “reasonable time” requirement laid down by Article 6 § 1 began on 17 February 1986, when Mr Mattoccia received judicial notification (*comunicazione giudiziaria*) of the allegation that he had committed the offence of rape (see the Deweer v. Belgium judgment of 27 February 1980, Series A no. 35, p. 24, § 46, and paragraph 18 above), and ended with the filing of the Court of Cassation's judgment in the registry on 19 July 1993 (see paragraph 42 above). Consequently, the proceedings lasted approximately seven years and five months.

B. Reasonableness of the length of the proceedings

76. According to the Court's case-law, the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (see, among other authorities, *Gelli v. Italy*, no. 37752/97, § 40, 19 October 1999, unreported, and *Pélissier and Sassi* cited above, § 67).

77. The Court notes that the nature of the offence did not, of itself, make the proceedings especially complex.

78. Further, like the Commission, the Court finds nothing to suggest that the applicant was in any way responsible for the delays in the proceedings; indeed, it was upon his initiative that the case was first set down for hearing at first instance (see paragraph 23 above).

79. The Court notes that a delay of approximately three years and seven months occurred between the applicant's committal for trial on 23 October 1986 (see paragraph 21 above) and the first hearing before the trial court on 19 May 1990 (see paragraph 23 above). A further delay of thirteen months then occurred between the Court of Appeal's judgment being lodged with the registry on 20 May 1991 (see paragraph 39 above) and the notification thereof to the applicant on 23 June 1992 (see paragraph 40 above). The Court finds no justification – nor has any been put forward by the Government – for such delays, which cover more than half of the overall length of the proceedings and are attributable to the national authorities.

80. The Court observes in this connection that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see, among many other authorities, *Pélissier and Sassi* cited above, § 74).

81. Having regard to all the evidence before it, the Court holds that the proceedings in question exceeded a “reasonable time”.

Consequently, there has been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

83. The applicant claimed 19,140,000 Italian lire (ITL) for pecuniary damage incurred as a direct result of the alleged violations, including loss of earnings in connection with his detention between 25 October 1993 and 25 March 1994 and decreased income after his release from prison. He further sought reparation for non-pecuniary damage, which he put at approximately ITL 200,000,000.

84. The Government submitted that there was no causal link between the alleged violations of the Convention and the amount claimed for pecuniary damage and asked the Court to rule that a finding of a violation constituted sufficient just satisfaction.

85. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of Article 6 of the Convention. The Court cannot speculate as to the outcome of the trial had the position been otherwise and therefore rejects the applicant's claims for pecuniary damage. The Court considers, however, that the applicant has suffered non-pecuniary damage which the findings of a violation of the Convention in the present judgment do not suffice to remedy. Ruling on an equitable basis, in accordance with Article 41, it awards the applicant ITL 27,000,000.

B. Costs and expenses

86. The applicant, relying in part on documentary evidence, sought ITL 33,700,000 for the costs and expenses incurred in retaining counsel. He apportioned that sum as follows: in the domestic proceedings his costs and expenses were ITL 8,000,000 and, in the proceedings before the Court, ITL 25,700,000, less the amount already paid in legal aid.

87. The Government maintained that there was no causal link between the legal costs incurred before the domestic courts and the alleged violations. They left the matter of the costs before the Court to be assessed by the Court in an equitable manner.

88. On the basis of the information before it, the Court, ruling on an equitable basis, awards the applicant ITL 15,000,000 under this head, together with any value-added tax which may be payable, less the amount already paid by way of legal aid under the Court's legal-aid scheme.

C. Default interest

89. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 2.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (a) and (b) of the Convention as regards the fairness of the proceedings;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) ITL 27,000,000 (twenty-seven million Italian lire) in respect of non-pecuniary damage;
 - (ii) ITL 15,000,000 (fifteen million Italian lire) for costs and expenses, together with any value-added tax that may be chargeable;
 - (b) that simple interest at an annual rate of 2,5% shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 25 July 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President