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

COURT (CHAMBER)

CASE OF LUBERTI v. ITALY

(Application no. 9019/80)

JUDGMENT

STRASBOURG

23 February 1984

In the Luberti case,

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

Mr. G. WIARDA, *President*,
Mr. J. CREMONA,
Mr. G. LAGERGREN,
Mr. E. GARCÍA DE ENTERRÍA,
Sir Vincent EVANS,
Mr. C. RUSSO,
Mr. R. BERNHARDT,

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

Having deliberated in private on 26 April 1983 and 27 January 1984,

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

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission"). The case originated in an application (no. 9019/80) against the Italian Republic lodged with the Commission on 19 May 1980 under Article 25 (art. 25) of the Convention by Mr. Luciano Luberti, an Italian national.

2. The Commission's request was filed with the registry of the Court on 19 July 1982, within the period of three months laid down by Articles 32 § 1 and 47 (art. 32-1, art. 47). The request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the Italian Republic recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The request sought a decision from the Court as to the existence of violations of Article 5 §§ 1 and 4 (art. 5-1, art. 5-4).

3. The Chamber of seven judges to be constituted included, as ex officio members, Mr. C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 § 3 (b) of the Rules of Court). On 13 August 1982, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. J. Cremona, Mr. G. Lagergren, Mr. E. García de

* Note by the registry: In the version of the Rules applicable when proceedings were instituted. A revised version of the Rules entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date.

Enterría, Sir Vincent Evans and Mr. R. Bernhardt (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

4. Mr. Wiarda, who had assumed the office of President of the Chamber (Rule 21 § 5), ascertained, through the Registrar, the views of the Agent of the Italian Government ("the Government") and the Delegate of the Commission regarding the procedure to be followed. On 15 September 1982, he directed that the Agent should have until 15 November to file a memorial and that the Delegate should be entitled to reply in writing within two months from the date of the transmission of the Government's memorial to him by the Registrar.

The Government's memorial was received at the registry on 22 November 1982 and the Delegate's reply on 14 January 1983. Appended to the latter were the applicant's comments on the Government's memorial and his claims under Article 50 (art. 50) of the Convention.

5. On 17 January 1983, the President directed that the Agent of the Government should have until 28 February to submit a supplementary memorial. The registry received the original Italian text on 15 February and the French translation, the official text for the Court, on 21 April.

The Secretary to the Commission forwarded to the Registrar, on 24 February, some further details provided by the applicant on the question of the application of Article 50 (art. 50) of the Convention and, on 18 March, the comments of the Delegate on Mr. Luberti's various claims under this head.

6. On various dates between 26 April and 22 September 1983, the Registrar, acting on the Chamber's instructions, obtained, partly from the Commission and partly from the Government, certain documents and an item of information.

7. On 27 January 1984, the Chamber decided to dispense with hearings, having found that the requisite conditions for this derogation from the usual procedure were satisfied (Rules 26 and 36 of the Rules of Court). The President had previously consulted, through the Registrar, the Agent of the Government and the Delegate of the Commission on this point.

AS TO THE FACTS

A. The particular circumstances of the case

8. Mr. Luberti, who is an Italian national born in 1924, currently resides in a religious home. On 20 January 1970, in Rome, he killed his mistress by firing several shots at her. He then left the apartment, leaving the body behind.

On 25 March 1970, the police, acting on information in a letter from the applicant confessing to the killing, discovered the body. According to the police report, the circumstances of the act suggested that the perpetrator was not fully in possession of his mental faculties.

Criminal proceedings were instituted against Mr. Luberti; he was not arrested until 10 July 1972, by which date the preliminary investigation of the case had been completed and he had been committed for trial on a charge of murder.

9. On 17 January 1976, the Rome Assize Court sentenced Mr. Luberti - who had pleaded not guilty - to twenty-one years' imprisonment for murder and to one year's imprisonment and a fine of 500,000 Lire for possession of military weapons.

10. The applicant appealed, pleading for the first time, amongst other grounds, that he was insane at the time of the commission of the act of which he was accused.

On 24 November 1976, the Rome Appeal Court of Assize ordered an expert psychiatric opinion. The two experts appointed for this purpose filed their report on 11 November 1977; their conclusion was that at the date of the killing Mr. Luberti was suffering from a paranoiac syndrome (sindrome paranoica) depriving him of the capacity to form an intention (capacità di volere) and that at the time when the opinion was drawn up he was, in psychiatric terms, a dangerous person.

As this conclusion was challenged by the expert called by the party seeking damages (consulente tecnico), the Appeal Court directed on 17 November 1978 that a further expert opinion be obtained. The Appeal Court wished to be advised whether the applicant was, at the time of the killing, partly or completely insane and whether he was still a danger to society. Three new experts examined Mr. Luberti on several occasions; they saw him for the last time on 14 May 1979. Although their report agreed with the previous report in other respects, it differed as regards the precise diagnosis of his illness; it also found that at the moment of the crime Mr. Luberti lacked the capacity to understand and not just the capacity to form an intention (capacità d'intendere e di volere). In addition, the report contained observations on the applicant's behaviour during his meetings with the experts. It mentioned certain symptoms of the illness that was diagnosed: evidence of megalomania was to be found in Mr. Luberti's overestimation of himself, in his superiority complex in regard to the experts, in his conviction that he was immortal and in his antagonistic attitude to the world around him. Furthermore, statements by the applicant alleging that he was the victim of widespread international conspiracies showed clearly that he was suffering from persecution mania. Finally, the report affirmed that the psychosis observed had certainly also existed at the time of the events giving rise to the criminal proceedings.

The Appeal Court accepted these findings. On 16 November 1979, it acquitted Mr. Luberti on the ground of mental incapacity (infermità psichica - Article 88 of the Criminal Code) and directed that he be confined for two years in a psychiatric hospital. This security measure was ordered on the basis of Article 222 of the Criminal Code as then in force (see paragraph 18 below). Amongst other things, that Article provided that in a case like Mr. Luberti's the court always had to order confinement for two years, there being a legal presumption that the accused was a danger to society.

However, although it was under no legal obligation to do so, the Appeal Court of Assize also made a finding as to the applicant's mental health at the time of its judgment. It agreed in particular with the conclusions of the two expert opinions regarding Mr. Luberti's lack of responsibility and the assessment of his dangerous character. It added that his dangerous character was not simply presumed but real, as the experts had unanimously found, and that attention should be drawn to this as a factor that could, in due course, assist in making a re-assessment of Mr. Luberti's state of mind when the question of the termination of his confinement came to be considered. Finally, the Appeal Court of Assize noted that the case concerned a "paranoiac" and that the confinement necessitated by his state of mental health should follow his detention without a break.

Pursuant to Article 485 of the Code of Criminal Procedure, taken in conjunction with Article 206 of the Criminal Code, the Appeal Court of Assize ordered the provisional implementation of its decision.

11. Appeals on points of law, based on different grounds, were lodged with the Court of Cassation by the applicant and by the public prosecutor attached to the Rome Court of Appeal. Mr. Luberti complained of the failure of the Appeal Court of Assize to take account of a medico-legal and ballistic report which had been drawn up pursuant to a direction it had given at the hearings and which should have determined whether there had been homicide or, on the contrary, suicide. The two appeals were dismissed on 17 June 1981.

12. Pursuant to the judgment of the Appeal Court of Assize, Mr. Luberti, who had been continuously detained in prison since 10 July 1972, was admitted to the psychiatric hospital of Aversa (Province of Naples) on 21 November 1979.

13. After that judgment, Mr. Luberti made several applications to the judicial authorities for release from confinement. He adopted basically two different approaches.

On the one hand, he applied on 28 November 1979 to the supervising judge (magistrato di sorveglianza - see paragraph 21 below) at the Santa Maria Capua Vetere court (within whose jurisdiction the hospital was situated) to have the periods during which he was undergoing psychiatric examinations whilst in detention on remand set off against the period of the security measure. This application was rejected.

On the other hand, Mr. Luberti applied to three different courts for early release from confinement, on the ground that it was not justified by his state of health.

14. He turned first - as early as 19 November 1979, that is barely three days after the judgment of the Appeal Court of Assize - to the Rome Supervision Division (sezione di sorveglianza - see paragraph 21 below); he relied on Article 207 of the Criminal Code and section 71 of Act no. 354 of 26 July 1975, concerning the administration of prisons and the implementation of measures involving deprivation or restriction of liberty.

The Supervision Division first undertook a series of inquiries. It obtained, inter alia, a medical report from the hospital, a copy of Mr. Luberti's "clinical diary" and several documents submitted by him.

On 5 March 1980, a psychologist consulted by the applicant on a private basis issued him with a certificate to the effect that he had recovered and that it was necessary to release him if the clinical progress achieved was not to be completely reversed.

On 5 August 1980, the Rome Supervision Division held a hearing at which the public prosecutor's office submitted, on the basis of Article 635 of the Code of Criminal Procedure (see paragraph 21 below), that that Division lacked jurisdiction since the appeals on points of law against the judgment of 16 November 1979 (see paragraph 11 above) were still pending. By order of the same date, deposited in the court registry on the following day, the Supervision Division ruled that it did not have jurisdiction. This order was based, inter alia, on a judgment of the Court of Cassation, in which it was held that an application for suspension of the implementation of a security measure imposed following an acquittal that has not yet become final must, since it constitutes an issue forming part of the proceedings (procedimento incidentale), be made to the trial court and not to the judge supervising the execution of sentences (1st Chamber, 12 June 1962, in "Giustizia Penale" 1965, III, p. 152).

On 16 August 1980, Mr. Luberti appealed on a point of law to the Court of Cassation. That Court held on 3 December 1980 that, under Article 640 of the Code of Criminal Procedure, the Rome Court of Appeal had jurisdiction to determine the appeal. The judgment (decreto) was deposited in the court registry on 4 February and the file was sent to the Court of Appeal on 26 February 1981. By judgment (decreto) of 4 May 1981, deposited in the court registry on 29 May, the Court of Appeal confirmed the order of 5 August 1980.

15. On 16 August 1980, the date of his appeal to the Court of Cassation against the aforesaid order, Mr. Luberti had also made two other applications: one was addressed to the Rome Appeal Court of Assize and the other to the Naples Supervision Division, within whose district the hospital where he was confined was situated.

16. At first, on 4 September 1980, the proceedings before the Appeal Court of Assize were suspended indefinitely because on 22 August the applicant had failed to report back to the hospital after an eight-hour period of leave granted to him by the supervising judge at the Santa Maria Capua Vetere court. Subsequently, on a date which the Government were unable to indicate, the Appeal Court discontinued the proceedings before it. The applicant was again arrested on 17 March 1981 and re-admitted to the hospital two days later.

17. The Naples Supervision Division in the first place suspended its decision pending the final outcome of the proceedings instituted before the Rome Supervision Division (see paragraph 14 above). It resumed consideration of the application pending before it as soon as the Rome Court of Appeal had dismissed, on 4 May 1981, the appeal against the order of 5 August 1980 (ibid.). The hearings were held on 12 May, that is even before the Appeal Court's judgment had been deposited in its registry (29 May). The material before the Naples Supervision Division included a medical report dated 16 April 1981 - that is, less than a month after Mr. Luberti's return to the psychiatric hospital -, which had been drawn up for the purposes of the inquiry into the case; the Chief Medical Officer (Direttore capo sanitario) of the hospital stated therein that "from the clinical point of view there [was] no reason why the security measure should not be terminated".

On 4 June 1981, the Naples Supervision Division directed that the confinement should be terminated, having found, particularly in the light of the aforesaid report, that psychiatrically and criminologically Mr. Luberti was no longer dangerous. Before giving its decision on the merits of the case, the Supervision Division stated that it had jurisdiction to rule on the application although the public prosecutor's appeal on points of law against the judgment of the Rome Appeal Court of Assize was still pending (see paragraph 11 above); it disagreed with the Rome Supervision Division's interpretation of Article 635 of the Code of Criminal Procedure (see paragraph 14 above).

The order was deposited on 10 June and Mr. Luberti was released on 15 June that is two days before the dismissal of the two appeals on points of law (see paragraph 11 above).

B. The applicable domestic law

18. Under Article 222 of the Italian Criminal Code in force at the time of Mr. Luberti's trial, an accused acquitted on account of insanity was to be subjected to a security measure in the form of confinement in a psychiatric hospital (ospedale psichiatrico giudiziario). The minimum period of detention was prescribed by law by reference to the seriousness of the offence; in the present case, that period was two years.

Article 202, first sub-paragraph, provided that security measures could be imposed only on persons who were a danger to society and had committed an act constituting an offence under the law. Under the first sub-paragraph of Article 204, such measures were to be ordered where it was established that the individual concerned was a danger to society. However, the second sub-paragraph added:

> "In the cases expressly provided for" - including that covered by Article 222 -, "there shall be a legal presumption that the person concerned is a danger to society. Nevertheless, even in such cases the application of security measures shall be conditional on proof of a danger of this nature, if the conviction or acquittal was pronounced:
>
> (1) more than ten years after the facts occurred, when persons of unsound mind are involved, in the cases set out in the second sub-paragraphs of Articles 219 and 222; ...."

The presumption created by the first sentence of this text was applicable in the present case.

19. On some points, there was a change in the law following a judgment handed down by the Constitutional Court on 27 July 1982 (no. 139). It was held in that judgment that Article 222, first sub-paragraph, and Article 204, second sub-paragraph, of the Criminal Code were unconstitutional

> "... in so far as they fail[ed] to make a decision that an individual acquitted on account of insanity be confined in a psychiatric hospital conditional on a prior finding, either by the trial court or by the judge supervising the execution of sentences, there was a continuing danger to society on account of the ... illness at the time of the application of the measure ...."

20. Under Article 207, as qualified by another Constitutional Court judgment (no. 110 of 23 April 1974), termination of a security measure such as Mr. Luberti's confinement can be ordered even before expiry of the minimum period, for example on application by the individual concerned, if he no longer presents a danger to society. Article 208 specifies that the court shall in any event re-examine the position at the end of that period in order to determine whether the person confined still presents such a danger and shall, if appropriate, fix the date for a further examination.

21. Under Article 206 of the Criminal Code, the implementation of a security measure may in certain cases, including that of a person of unsound mind, begin during the investigation or the trial; this is no more than a discretionary power enjoyed by the court. At this stage, the measure is deemed provisional and only the trial court has jurisdiction over any questions to which it may give rise, including the question of termination of the measure.

For security measures ordered subsequently to the investigation or the trial, Article 635 of the Code of Criminal Procedure confers the power of review and decision on the judge supervising the execution of sentences (giudice di sorveglianza). This institution is comprised of two organs: the

supervising judge (magistrato di sorveglianza) and the supervision division (sezione di sorveglianza). Their respective jurisdictions, which are mutually exclusive, are laid down by sections 69 and 70 of Act no. 354 of 26 July 1975, concerning the administration of prisons and the implementation of measures involving deprivation or restriction of liberty. In particular, it is the supervision division which hears applications for termination of security measures.

Supervising judges and supervision divisions give decisions at first instance. The individual concerned and the public prosecutor's office have a right of appeal against such decisions either to the Court of Appeal (Article 640 of the Code of Criminal Procedure) or, if the ground of appeal is alleged violation of the law, to the Court of Cassation (section 71 ter of Act no. 354 of 1975). They may also challenge a judgment (decreto) given by the Court of Appeal in such proceedings, by filing an application for review (ricorso per revisione) with the Court of Cassation; in that event, the Court of Cassation is also empowered to give a decision on the merits of the case (Article 641 of the Code of Criminal Procedure).

PROCEEDINGS BEFORE THE COMMISSION

22. In his application of 19 May 1980 to the Commission (no. 9019/80), Mr. Luberti complained of having been confined in a psychiatric hospital although he was no longer suffering from any mental disorder. He also complained that the Italian courts had not given a decision speedily on his applications for the confinement order to be set aside. On the first point he relied on paragraph 1 of Article 5 (art. 5-1) of the Convention, and on the second point on paragraph 4 (art. 5-4).

23. The Commission declared the application admissible on 7 July 1981.

In its report of 6 May 1982 (Article 31 (art. 31) of the Convention), the Commission expressed the opinion:

- by ten votes to two, that there had not been a violation of Article 5 § 1 (art. 5-1) of the Convention;
- unanimously, that there had been a violation of Article 5 § 4 (art. 5-4).

The report contains one separate opinion.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (art. 5-1)

24. The applicant contended that when the Rome Appeal Court of Assize gave judgment on 16 November 1979 he was no longer suffering from any mental disorder; he maintained that the Appeal Court had ordered his confinement without having regard to his state of health on the date of the judgment, pursuant to Article 222 of the Criminal Code, which, at the time, prescribed that this security measure was to be automatically imposed in such cases (see paragraphs 10 and 18 above). He relied on Article 5 § 1 (art. 5-1) of the Convention, which reads as follows:

> "1. 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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected 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;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

The Government disagreed. In their view, Mr. Luberti's mental health warranted his being sent to a psychiatric hospital. They further submitted that the Rome Appeal Court of Assize had verified not only that Mr. Luberti was of unsound mind at the time of the killing and subsequently, but also whether he presented a danger to society at the date of its judgment (see paragraph 10 above), and had taken this into account when arriving at its decision which was based on the conclusions in the expert opinions.

The Commission observed that it was not called upon to express a general view on the compatibility of the presumption created by Article 204 of the Criminal Code (see paragraph 18 above) with sub-paragraph (e) of Article 5 § 1 (art. 5-1-e) of the Convention, which was the only sub-paragraph that the Commission considered relevant. The Commission was of the opinion that the application of Italian law had not contravened the Convention in the present case. In its view, the nature and extent of Mr.

Luberti's mental illness were in fact such as to provide a justification for his confinement.

25. In accordance with its settled case-law, the Court will confine its attention, as far as possible, to the issues raised by the concrete case : it will ascertain whether the applicant's deprivation of liberty was consonant with the requirements of Article 5 § 1 (art. 5-1). Only the opening part and sub-paragraph (e) of paragraph 1 (art. 5-1-e) are relevant: sub-paragraphs (b) to (d) and (f) (art. 5-1-b, art. 5-1-c, art. 5-1-d, art. 5-1-f) clearly have no relevance to the case; sub-paragraph (a) (art. 5-1-a) refers to a situation in which there has been a conviction (see the X v. the United Kingdom judgment of 5 November 1981, Series A no. 46, p. 17, § 39, and the Van Droogenbroeck judgment of 24 June 1982, Series A no. 50, p. 19, § 35), whereas here there was an acquittal.

26. To comply with Article 5 § 1 (art. 5-1), the confinement in question must have been effected "in accordance with a procedure prescribed by law", have been "lawful" and have involved a "person of unsound mind". It was only the last test which was, according to the applicant, not satisfied; there was no dispute as regards the other two.

27. The Court would recall that in deciding whether an individual should be detained as a "person of unsound mind", the national authorities are to be recognised as having a certain margin of appreciation since it is in the first place for the national authorities to evaluate the evidence adduced before them in a particular case; the Court's task is to review under the Convention the decisions of those authorities (see the Winterwerp judgment of 24 October 1979, Series A no. 33, p. 18, § 40). An individual cannot be considered to be "of unsound mind" for the purposes of Article 5 § 1 (art. 5-1) and deprived of his liberty unless the following three minimum conditions are satisfied: he must be reliably shown to be of unsound mind; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder (see the above-mentioned X v. the United Kingdom judgment, Series A no. 46, p. 18, § 40, and, mutatis mutandis, the Stögmüller judgment of 10 November 1969, Series A no. 9, pp. 39-40, § 4, the above-mentioned Winterwerp judgment, Series A no. 33, p. 18, § 39, and the above-mentioned Van Droogenbroeck judgment, Series A no. 50, pp. 21-22, § 40).

28. By maintaining that he had already recovered when the Rome Appeal Court of Assize directed that he be confined, Mr. Luberti is basically arguing that the first two of these conditions were not satisfied.

The Court shares the contrary opinion which was expressed by the Commission and the Government.

In the first place, it can be seen to have been reliably established by the Appeal Court of Assize that Mr. Luberti was of unsound mind. The Appeal Court verified the existence of that condition not only as at the time of the

killing ("nel momento in cui [aveva] commesso il fatto"), as required by Articles 222 and 88 of the Criminal Code, read together, but also as at the date of adoption of the measure depriving Mr. Luberti of his liberty, the latter approach being in conformity with the requirements of Article 5 (art. 5) of the Convention. This is made clear beyond all doubt by the judgment of 16 November 1979: in the reasons, reference was made, inter alia, to two psychiatric reports which were prepared a long time after the event and were themselves to a large extent based on the behaviour of and the statements made by Mr. Luberti during the proceedings (see paragraph 10 above).

Moreover, the Appeal Court of Assize did not fail to satisfy itself that the mental disorder from which the applicant was suffering at the time of its judgment was of a kind and degree warranting compulsory confinement: it found that he did, at that time, present a real danger, to such a degree that it deemed it necessary to order the provisional implementation of its decision (see paragraphs 10 and 12 above).

29. It remains to be ascertained whether the "detention" complained of, which was initially compatible with Article 5 § 1 (art. 5-1) of the Convention, continued beyond the period justified by Mr. Luberti's mental disorder.

According to the information before the Court, two reports on Mr. Luberti's state of mental health were drawn up during the period between 16 November 1979, when the Appeal Court of Assize gave judgment, and 10 June 1981, when the security measure was terminated (see paragraphs 10 and 17 above).

The first report - the certificate dated 5 March 1980 - concluded that Mr. Luberti had recovered and that it was necessary to release him if the clinical progress achieved was not to be completely reversed (see paragraph 14 above). However, this report emanated not from a psychiatrist but from a psychologist consulted by the applicant on a private basis. Quite apart from that, the report was not sufficient in itself to necessitate a decision to release Mr. Luberti, especially in view of the fact that it contradicted both the findings contained in the judgment of the Appeal Court of Assize and made only a few months previously (16 November 1979), and also the expert opinions on which that judgment had been based. The Rome Supervision Division, therefore, had to proceed with circumspection and had to verify for itself Mr. Luberti's mental state.

In fact, that Division ordered his medical file to be produced and began an inquiry into his case; nevertheless, it gave no decision on the merits since it held on 5 August 1980 that it lacked jurisdiction (see paragraph 14 above). On 16 August, Mr. Luberti appealed on a point of law to the Court of Cassation and made further applications to the Rome Appeal Court of Assize and the Naples Supervision Division to secure his release. However, immediately afterwards - on 22 August - he absconded, with the result that

it was not possible for him to undergo further psychiatric examinations until his arrest in March 1981.

The second report was drawn up on 16 April 1981 for the purposes of the inquiries relative to the application made to the Naples Supervision Division; the Chief Medical Officer at the Aversa hospital stated therein that from the clinical point of view there was no reason why the security measure should not be terminated (see paragraph 17 above).

The Chief Medical Officer's report was, of course, not the final step in the proceedings; it had neither the character nor the legal effects of a decision. It was in no way binding on the Naples Supervision Division, to which it was sent. That Division still had to satisfy itself that Mr. Luberti's mental condition justified his release. The termination of the confinement of an individual who has previously been found by a court to be of unsound mind and to present a danger to society is a matter that concerns, as well as that individual, the community in which he will live if released; the instant case involved someone who had committed homicide, a factor which increased the inherent difficulties of any assessment in the psychiatric field. Accordingly, the Supervision Division had to proceed with caution and needed some time to consider the case.

It has not been shown that the Naples Supervision Division unduly retarded its decision. Even before the conclusion of the proceedings instituted in Rome, it took steps to inquire into Mr. Luberti's application. It held hearings as early as 12 May 1981, eight days after the judgment of the Rome Appeal Court of Assize and seventeen days before the deposit of that judgment in the court registry (see paragraph 17 above). Its decision, which was adopted on 4 June 1981 and deposited in the court registry on 10 June, led on 15 June to Mr. Luberti's release. These various intervals of time are not inordinate: in the Court's opinion, the Naples Supervision Division carried out its task as rapidly as could be reasonably expected. If the Rome Supervision Division had acted with more dispatch, it might perhaps have been feasible to arrive sooner at the conclusion that the continuation of the confinement was no longer necessary. The Court does not rule out this possibility but, on the basis of the evidence before it, it does not consider that it has been established that the applicant's detention continued beyond the period justified by his mental disorder. There has therefore been no violation of Article 5 § 1 (art. 5-1).

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 (art. 5-4)

30. Under Article 5 § 4 (art. 5-4),

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

According to Mr. Luberti, the Italian courts did not give a decision "speedily" on his applications for termination of his confinement. The Government contested this submission before the Commission - which accepted it in its essentials -, but in their memorial to the Court (see paragraph 4 above) they conceded that the proceedings before the Rome Supervision Division, which served solely to establish that the authority to which the application had been made lacked jurisdiction, had not been concluded speedily.

31. The Court has to determine this issue notwithstanding the absence of violation of Article 5 § 1 (art. 5-1); on this point, it refers to its settled case-law (see, as the most recent authority, the above-mentioned Van Droogenbroeck judgment, Series A no. 50, p. 23, § 43).

Certain distinctions that are relevant in the present case are to be found in previous judgments given by the Court on Article 5 § 4 (art. 5-4).

Where the decision to deprive an individual of his liberty is one taken by an administrative body, that individual is entitled to have the lawfulness of the decision reviewed by a court, but the same does not apply when the decision is made by a court at the close of judicial proceedings, the review required by Article 5 § 4 (art. 5-4) being in that event incorporated in the decision (see, as the most recent authority, the above-mentioned Van Droogenbroeck judgment, ibid., p. 23, §§ 44-45).

The Court has also held, in connection with the confinement of persons of unsound mind, that provision should always be made for a subsequent review to be available at reasonable intervals, in as much as the reasons initially warranting confinement may cease to exist (see, as the most recent authority, the above-mentioned X v. the United Kingdom judgment, Series A no. 46, pp. 22-23, § 52).

32. Mr. Luberti’s confinement was based on a judgment of the Rome Appeal Court of Assize, delivered on 16 November 1979 at the close of proceedings that were accompanied by the necessary judicial guarantees. Accordingly, all that has to be ascertained is whether the applicant was subsequently entitled, after a "reasonable interval", to take "proceedings" by which the "lawfulness" of his continued "detention" was decided "speedily" by a court.

33. Mr. Luberti lodged three applications for termination of his confinement. The first was made, on 19 November 1979, to the Rome Supervision Division; the second, on 16 August 1980, to the Rome Appeal Court of Assize; and the third, also on 16 August 1980, to the Naples Supervision Division (see paragraphs 14-17 above). The first application resulted in a finding of lack of jurisdiction on the part of the Rome Supervision Division, given on 5 August 1980 and deposited in the court registry on the next day, which finding was confirmed, following an appeal by Mr. Luberti, by a decision of the Rome Court of Appeal, given on 4 May 1981 and deposited in the court registry on 29 May 1981; the outcome of

the second application was an order of the Rome Appeal Court of Assize, the date of which the Government were unable to supply, discontinuing the proceedings before it; the third application led to Mr. Luberti's release on 15 June 1981 pursuant to a decision of the Naples Supervision Division, given on 4 June 1981 and deposited in the court registry on 10 June 1981.

Although a decision "on the lawfulness of [Mr. Luberti's] detention", within the meaning of Article 5 § 4 (art. 5-4), was therefore given only by the Naples Supervision Division, this does not mean that account has to be taken only of the proceedings before that Division. What in fact has to be ascertained is whether, at the end of the day, Mr. Luberti was or was not able to exercise his right to have this issue determined "speedily" by the domestic judicial authorities, for whose functioning Italy is responsible before the Convention institutions. For this purpose, each of the various sets of proceedings involved in the present case must first be considered separately and then an overall assessment must be made.

34. The proceedings instituted on 19 November 1979 before the Rome Supervision Division were concluded, on appeal, on 29 May 1981, that is after eighteen months and ten days. An interval of this order appears, at first sight, to be strikingly long.

Nevertheless, it has to be noted that the proceedings were begun barely three days after the judgment acquitting Mr. Luberti and directing that he be deprived of his liberty. Whilst he was not obliged under Italian law to wait longer than this before making his application to the Rome Supervision Division, for Convention purposes the initial review of the "lawfulness" of his "detention" was incorporated in that judgment and the right to have the first application for release dealt with "speedily" only arose after a "reasonable interval" (see paragraph 31 above). Neither can it be forgotten that as early as 17 November 1979 Mr. Luberti had lodged an appeal on points of law with the Court of Cassation (see paragraph 11 above). He was evidently attempting, by contesting the reasons given by the Appeal Court of Assize for rejecting the plea that the victim had committed suicide, to avoid the security measure ordered on 16 November; he challenged that measure directly, on 19 November, before the Rome Supervision Division. Although he was certainly entitled to utilise all the means of defence available to him under the law, the fact that he had simultaneous recourse to two procedures which, though distinct, had the same basic object no doubt occasioned a loss of time that cannot be attributed to the authorities (cf., in the context of the "reasonable time" referred to in Article 6 § 1 (art. 6-1), the Eckle judgment of 15 July 1982, Series A no. 51, p. 36, § 82). Mr. Luberti also caused a further delay by challenging the Rome Supervision Division's decision before the Court of Cassation instead of before the Court of Appeal (see paragraph 14 above).

However, since this was an urgent case involving deprivation of liberty, these various factors do not provide a justification for the fact that the

proceedings begun in the Rome Supervision Division, which terminated only in a decision that it was without jurisdiction, were drawn out for more than a year and a half; indeed, the Government recognised that the proceedings had not been concluded "speedily", as is required by Article 5 § 4 (art. 5-4) of the Convention.

35. As for the second application, made on 16 August 1980, the consideration of it was suspended indefinitely by the Appeal Court of Assize on 4 September 1980 on account of Mr. Luberti's unauthorised absence (see paragraph 16 above). It is quite apparent that this step was normal in itself since any psychiatric examination would have necessitated his presence. In addition, the available information does not show that the said Court's decision to discontinue the proceedings before it was taken after 17 March 1981, the date of Mr. Luberti's re-arrest.

36. The proceedings relative to the third application, which was also made on 16 August 1980, lasted for nine months and twenty-five days (see paragraph 17 above). Although it is long, this lapse of time cannot be regarded as inordinate in the circumstances of the case. Firstly, the fact that Mr. Luberti had absconded meant that it was not possible for him to undergo further psychiatric examinations until he was re-admitted to the hospital in March 1981. Secondly, the Naples Supervision Division was obliged, at the outset, to suspend its decision until the Rome Court of Appeal had completed its proceedings in connection with the first application, made on 19 November 1979 to the Rome Supervision Division; here again, the applicant cannot complain of the consequences of the multiplicity of the steps taken by him (see paragraph 34 above). As soon as the Rome Court of Appeal had given its ruling (4 May 1981) and without awaiting the deposit of its judgment in the court registry (29 May 1981), the Naples Supervision Division began its consideration of the merits of the case and acted with the expedition required by Article 5 § 4 (art. 5-4) of the Convention; the Supervision Division's order, adopted on 4 June 1981 and deposited on 10 June, led on 15 June to Mr. Luberti's release. In this connection, the Court refers to its reasoning relative to the question of compliance with paragraph 1 of Article 5 (art. 5-1) (see paragraph 29 above).

37. Nevertheless, it remains true that the proceedings conducted in Rome, from 19 November 1979 to 29 May 1981, before the Supervision Division and then the Court of Cassation and the Court of Appeal were characterised by excessive delays. As a result of those delays, the Italian judicial authorities, notwithstanding the diligence shown by the Naples Supervision Division, did not give a decision "speedily" on "the lawfulness of [the] detention" in question; indeed, this was conceded by the Government. An overall assessment of the information before the Court thus leads it to the conclusion that there was a breach of Article 5 § 4 (art. 5-4).

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

38. Article 50 (art. 50) of the Convention reads as follows:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

39. The applicant claimed 20,000,000 Lire as compensation for pecuniary and non-pecuniary damage. He considered this to be justified by a year's suffering in a psychiatric hospital and by the expenses he had incurred "to meet the necessities" of his confinement. He also sought 1,000,000 Lire, together with value added tax at 18 per cent, for legal expenses before the Rome Supervision Division and the Rome Court of Appeal. In regard to both of these claims, he requested the Court also to take into account the fall in the value of money.

Both the Government and the Commission have expressed their views on the question and the Court considers it to be ready for decision (Rule 50 § 3 of the Rules of Court).

40. Since it has not been found in the present judgment that there was any breach of the requirements of paragraph 1 of Article 5 (art. 5-1), no account can be taken of any loss occasioned by the deprivation of liberty complained of, as such. As for the violation of paragraph 4, it is not established that Mr. Luberti would have been released at an earlier date if the requirement that a decision be given "speedily" had been complied with. Any allegation of pecuniary loss must therefore be rejected on account of the absence of any causal link (see, mutatis mutandis, the Van Droogenbroeck judgment of 25 April 1983, Series A no. 63, p. 6, §§ 11-12); on this point, the Court agrees with the Government and the Commission.

41. On the other hand, as the Commission rightly found and as was not contested by the Government, the applicant must have suffered some prejudice of a non-pecuniary nature by reason of the length of the proceedings which he instituted to seek termination of his confinement. However, it cannot be forgotten that he made, sometimes simultaneously, a series of applications several of which were addressed to a judicial authority that lacked jurisdiction; he was thus responsible for the fact that proceedings in regard to his case were pending at the same time before different tribunals, a situation that did not enhance the prospects of a rapid solution (see paragraphs 33, 34 and 36 above). Above all, a considerable amount of time was lost as a result of his absconding on 22 August 1980 and going into hiding until 17 March 1981 (see paragraph 16 above). The delays that occurred were therefore to a substantial extent due to his own conduct. In so far as they were attributable to the Italian authorities, the finding in point 2

of the operative provisions of the present judgment constitutes, for the purposes of Article 50 (art. 50) of the Convention, sufficient satisfaction for the aforesaid prejudice.

42. There remain the costs of the proceedings in Rome before the Supervision Division and the Court of Appeal, the available evidence showing that the applicant took steps to have these proceedings expedited. The Government raised no objection as regards these costs and, in the Commission's view; they "meet the conditions laid down by the Court for their reimbursement".

The Court, for its part, has no cause to doubt that this claim satisfies the various criteria which emerge from its case-law on the subject, as regards both the purpose for which the costs in question were incurred and the requirements that they be actually incurred, necessarily incurred and reasonable as to quantum (see notably the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 14, § 36). Accordingly, the Court awards to Mr. Luberti under this head 1,000,000 Lire, together with any value added tax that may be due.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been no breach of Article 5 § 1 (art. 5-1) of the Convention;

2. Holds that there has been a violation of Article 5 § 4 (art. 5-4);

3. Holds that the respondent State is to pay to the applicant, in respect of costs and expenses, one million (1,000,000) Lire, together with any value added tax that may be due;

Rejects the remainder of the claim for just satisfaction.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, this twenty-third day of February, one thousand nine hundred and eighty-four.

Gérard WIARDA
President

Marc-André EISSEN
Registrar