



M.A. v. Italy, Communication No. 117/1981 (21 September 1981), U.N. Doc. Supp. No. 40 (A/39/40) at 190 (1984).

Submitted by: The family of M.A., later joined by M.A. as submitting party [names deleted]

Alleged victim: M.A.

State party concerned: Italy

Date of communication: 21 September 1981 (date of initial letter)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 10 April 1984,

Adopts the following:

Decision on inadmissibility.

1.1 The authors of the communication (initial letter dated 21 September 1981 and three subsequent letters) are the parents, brother and sister of M.A., a 27-year-old Italian citizen and right-wing political militant and publicist, who joined as submitting party by letter of 16 February 1982 and numerous further letters.

1.2 The alleged victim is M.A. who at the time of submission was serving a sentence upon conviction of involvement in "reorganizing the dissolved fascist party", which is prohibited by an Italian penal law of 20 June 1952. By order of the Court of Appeals of Florence, M.A., was conditionally released and placed under mandatory supervision on 29 July 1983.

1.3 The authors do not specify which articles of the Covenant have allegedly been violated. It is generally claimed that M.A. was condemned to prison solely for his ideas and that he has been deprived of the right to profess his political beliefs.

2.1 In his communication of 16 February 1982 M.A. stated inter alia that, although he had had contacts with some of the organizers of the Fronte Nazionale Rivoluzionario (FNR), he had not participated in the constitutive meeting of 22 January 1975. He disputed the accusation that he was one of the organizers of FNR and challenged the fairness of the trial against him.

2.2 In their letter of 27 January 1982 the family of M.A. stated that he was born in Lucca, Italy, on 14 July 1956 and was 15 years old when he joined the Movimento Politico Ordine Nuovo, which was dissolved by order of the Italian Ministry of the Interior on 23 November 1973. Thereafter, M.A. participated in the cultural organization of Movimento Sociale Italiano (right-wing party represented in the Italian Parliament, MSI). In May 1977 he founded the "Committee against repression and for the defence of the civil rights of anti-Marxist political prisoners". In June 1977 he founded the monthly newspaper "Azione Solidarieta" and in October 1977 he became the cultural organizer of MSI in Bologna. He went into exile in France in October 1978.

2.3 Court proceedings against M.A. were initiated in 1974, when he was 17 years of age and he was sentenced to four years imprisonment on 11 May 1976 by the Arezzo Court of Assizes. He was detained from September 1976 to April 1977, when he was released on mandatory daily supervision. The Florence Court of Appeals confirmed the sentence on 30 November 1977 and the Rome Court of Cassation confirmed the judgement on 1 December 1978. In the meantime, however (October 1978 according to the authors), M.A. went into exile in

France. There is no indication as to whether the mandatory daily supervision had been lifted or other information explaining the circumstances in which he left Italy. (The French "Carte de sejour" indicates that he entered France on 6 January 1979.) All these events, based on the information furnished by the authors, took place prior to the entry into force for Italy of the Covenant and Optional Protocol on 15 December 1978. Subsequent to this date, on 6 September 1980, M.A. was extradited from France and imprisoned at the Casa Circondariale di Ferrara in Italy. He claims that the extradition order violated his rights, because he had been convicted of a political offence.

3. On 28 January 1982 the M.A. family stated that the same matter had not been submitted to another procedure of international investigation or settlement.

4. The authors do not specify which articles of the Covenant have allegedly been violated. It is generally claimed that M.A. was condemned to prison solely for his ideas, and that he has been deprived of the right to profess his political beliefs.

5. Various documents submitted with the communication include copies of the judgements of the Court of Assizes of Arezzo and Court of Appeals of Florence} a request for amnesty directed to the President of the Republic of Italy; original of a memorandum cementing on the evidence before the courts and the original of a brief challenging the constitutionality of the Italian law of 20 June 1952.

6. By its decision of 16 July 1982, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of admissibility of the communication, in particular in so far as it may raise issues under articles 19 (right to hold opinions and freedom of expression), 22 (freedom of association) and 25 (right to take part in the conduct of public affairs) of the International Covenant on Civil and Political Rights.

7.1 By a note dated 17 November 1982, the Italian Government objected to the admissibility of the communication, inter alia, because the author "did not specify in any way the violation of which he claims to be a victim ... but is merely asking for a review of his trial, since he believes that the Human Rights Committee would have competence to declare him 'not guilty'. In these terms, it is obvious that, so far as the 'request' of the authors of the communication is concerned, the Committee is not competent to review the sentence passed by the Italian courts".

7.2 The State party notes, however, that:

"when the Human Rights Committee examined the documents received in the light of the relevant provisions of the Covenant and, in so doing, acted 'ex officio', it considered that it would be advisable to obtain information regarding such connection as might exist between the legal proceedings instituted against M.A. and articles 19, 22 and 25 of the Covenant.

'In this connection, the Italian Government, while considering that the conclusions referred to in the preceding paragraph make any further comment superfluous, does not challenge the examination carried out ex officio by the Committee and, in a spirit of co-operation, wishes to make the following observations regarding the admissibility of the communication on the basis that the latter does have some bearing on the above-mentioned articles of the Covenant.

"The legal proceedings against M.A. led to the decision of the Arezzo Court of Assizes dated 28 April 1976, confirmed by the decision of the Florence Court of Appeals dated 30 November 1977 and made final when the appeal to the Court of Cassation was dismissed by decision of 1 December 1978.

"The chronological order of events, together with the legal decisions, show unequivocally that, at the said periods, Italy was not bound by the United Nations Covenants or by the Optional Protocol which came into force for Italy on 15 December 1978, that is, after the decision of the Court of Cassation.

"Accordingly, in the opinion of the Italian Government, it follows that the communication is inadmissible on the ground of lack of competence 'ration, temporis'.

"The Italian Government is aware, however, that the Committee, while stressing the communications will be inadmissible if the facts which are subject of the complaint occurred before the entry into force of the Covenant, deems itself competent, by virtue of its earlier decisions, to take such facts into account if the author asserts that the alleged violations had not ceased after the date of entry into force of the Covenant. But in the present case it is clear from the dossier that the author of the communication has not alleged any violation, nor has he asserted that the alleged violations did not cease after 15 December 1978.

"... The author of a complaint, communication or even request addressed to an international body can only invoke the same violations as those already alleged in national proceedings and for which he has not obtained satisfaction.

"Accordingly, with a view to ensuring that this aspect of the matter is properly reviewed, it is necessary to consider the alleged violations referred to in the communication in the light of the action taken in his defence by M.A. and his lawyer in the proceedings before the Arezzo and Florence courts, and also before the Court of Cassation.

"On the basis of the papers submitted in connection with the dossier, the reply is clearly in the negative If, on the other hand, it is decided to follow the course adopted by the Human Rights Committee and to assume that the applicant is in fact alleging violations of articles 19, 22 and 25 of the Covenant, it is necessary to determine whether the author invoked the same rights before the Italian courts.

"In this connection, although the said provisions of the Covenant could not be invoked by M.A. - because the Covenant was not in force for Italy - it must be recognized that corresponding provisions are to be found in articles 9, 10 and 11 of the European Convention on Human Rights.

"As is well known, the latter Convention, which was ratified by Act No. 848 of 4 August 1955, forms an integral part of Italian law. The application of these provisions can therefore be referred directly to the Italian courts.

"If M.A. considered in the present case that his rights had been violated by the application of the Act No. 645 of 20 June 1952, he should have asked for the relevant articles of the European Convention to be applied immediately at first instance or, failing that, on appeal to the Court of Cassation.

"M.A. never invoked the said provisions and never complained of the violation of rights which, according to the Human Rights Committee, are the subject of the communication under consideration.

"The Italian Government therefore considers that the communication is also inadmissible on the ground indicated above.

"Lastly, if it is none the less intended to invoke the said articles of the Covenant, it may be noted that paragraph 3 of article 19 contains an explicit provision whereby certain restrictions, which must, however, be expressly stipulated by law and which are necessary (a) for respect of the rights or reputations of others and (b) for the protection of national security or of public order, or of public health or morals, are deemed to be lawful. Similar restrictions are also provided under articles 22 and 25.

"However, an examination of the indictment against M.A. shows that it is for 'reorganizing the dissolved fascist party' that is, for organizing a movement which has as its object the elimination of the democratic freedoms and the establishment of a totalitarian regime.

"It is clearly a case of restrictions 'expressly stipulated by law (Scelba Law)' and 'which are necessary ... in a democratic society for the protection of national security, public order ...'.

"In light of the foregoing considerations, the Italian Government considers that M.A.'s communication, being inadmissible on the grounds referred to above, should also be deemed inadmissible, by virtue of the restrictions provided for under article 19, paragraph 3, article 22, paragraph 2, and article 25, since it is manifestly devoid of foundation."

8. In response to the State party's submission under rule 91 the author forwarded the following comments dated 6 January 1983:

"In its reply dated 17 November 1982, the Italian Government considers that the communication which I submitted to you should be 'inadmissible' because:

"(a) '... the Human Rights Committee is not competent to review the sentence passed by the Italian courts'.

'The Human Rights Committee should, however, be deemed to have the competence and the power to do so, inasmuch as it is the judicial organ which has to ensure that the provisions of the Covenant are implemented by the Governments that are signatories to it.

"(b) '... the legal proceedings against M.A. took place between 1971 and 1978' at which time 'Italy was not bound by the United Nations Covenants or by the Optional Protocol'.

"However, the Italian Government knows that the legal proceedings against M.A. did not end in 1978, but continued until 6 August 1980 (on which date I was being held in prison in Nice, France) when the French Government was asked by the Italian Government to arrest M.A. (the Italian Government then applied for his extradition on a charge of 'reorganizing the dissolved fascist party' and other charges).

'It thus follows '... that the alleged violations did not cease following the date of entry into force of the Covenant' but, in the present case, as is clear from the communication which I have submitted to you, they continued beyond the entry into force of the Covenant and the Protocol since, on 6 August 1980, after the arrest of M.A., the Italian Government applied for his extradition, under Act No. 645 of 20 June 1952, article 2 (1), in respect of the charge for which he had been sentenced in Italy to four years' imprisonment (as can be seen from the decision of the Aix-en-Provence Court (Chambre d'Accusation), France, dated 5 September 1980).

"The timing of events makes it quite clear that the violations of one or more provisions of the Covenant and subsequently the unlawfulness of his detention extend beyond the entry into force of the Covenant and the Protocol.

"(c) According to the Italian Government, I 'should have asked for the relevant articles of the European Convention to be applied immediately at first instance, or, failing that, on appeal to the Court of Cassation'.

"It is, however, a well known fact that, under articles 2 and 3 of the Italian Criminal Code it is for the court itself to apply the law that is most favourable to the accused.

"It is stated: 'Nobody may be punished for an act which, under a subsequent law, does not constitute an offence} and, in the event of a conviction, it shall not be enforceable nor have penal effects.'

"Consequently, it was not for M.A. to request that the relevant articles of the European Convention be applied; it was for the judges of the Arezzo Court of Assizes or of the Florence Court of Appeals or, in the final instance, of the Court of Cassation to apply them ...".

9. On 10 January 1983, the legal representative of M.A. submitted further comments, noting that:

"(a) The violations did not come to an end prior to 15 December 1978, which is obvious since he is currently serving the sentence for which he was tried. Thus, the law applied is still in force and the sentence against M.A. is being carried out;

"(b) The restrictions in the law applied in M.A.'s case are themselves based on a law which was purportedly enacted in order to protect public safety, but which in reality does not permit the expression of one particular ideology even by democratic and non-violent means. Therefore it is a law that persecutes or discriminates on the basis of ideology and as such is in violation of article 18 of the Covenant. It is also inherently discriminatory because it is aimed not at all allegedly "anti-democratic" movements (anarchistic, Leninist, etc.) but solely at movements with fascist leanings;

"(c) These facts were also put forward by legal counsel in proceedings brought before the Italian Courts ..."

10. In a further letter, dated 25 June 1983, the author informed the Committee of a decision taken by the French Conseil d'Etat, dated 3 June 1983, published on 17 June 1983, annulling the French extradition decree of 5 September 1980. The author appealed to the Committee for assistance in obtaining his immediate release from imprisonment, recalling that he has been detained in Italian prisons since 6 September 1980. In an annex to this letter M.A. encloses the text of the annulment decision, which was taken on the grounds of administrative irregularities, in particular because the extradition decree was issued without taking due account of the Law No. 79-387 of 11 July 1979 relative to administrative acts in France.

11.1 In a letter of 16 May 1983, M.A. informed the Committee that his legal counsel Mr. M.B. [name deleted] had been arrested. There is no indication, however, that this has any bearing on or relevance to the present case. In a further letter, dated 6 September 1983, the author in reply to a Secretariat request for information informed the Committee that following the arrest of his attorney, he has not taken a new legal representative. He also points out that no further submissions on his behalf will be made in response to the observations of the Italian Government.

11.2 The author also indicates that, upon his application, the Court of Appeals of Florence on 29 July 1983 ordered his release from imprisonment and placed him under mandatory supervision, prohibiting him from leaving the town of Lucca or Italian territory and further restricting his political activity. The author thus appeals to the Committee to intercede on his behalf in order to end his state of 'detention in liberty'.

12. Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with Rule 87 of its provisional rules of procedure, decide whether or not it is admissible under Optional Protocol to the Covenant.

13.1 The Human Rights Committee observes that in so far as the author's complaints relate to the conviction and sentence of M.A. for the offence, in Italian penal law, of "reorganizing the dissolved fascist party" they concern events which took place prior to the entry into force of the International Covenant on Civil and Political Rights and the Optional Protocol for Italy (i.e. before 15 December 1978) and consequently they are inadmissible under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant, ratione temporis.

13.2 In so far as the authors' complaints relate to the consequences, after the entry into force of the Covenant and the Optional Protocol for Italy, of M.A.'s conviction and sentence, it must be shown that there were consequences which could themselves have constituted a violation of the Covenant. In the opinion of the Committee there were no such consequences in the circumstances of the present case.

13.3 The execution of a sentence of imprisonment imposed prior to the entry into force of the Covenant is not in itself a violation of the Covenant. Moreover, it would appear to the Committee that the acts of which M.A. was convicted (reorganizing the dissolved fascist party) were of a kind which are removed from the protection of the Covenant by article 5 thereof and which were in any event justifiably prohibited by Italian law having regard to

the limitations and restrictions applicable to the rights in question under the provisions of articles 18 (3), 19 (3), 22 (2) and 25 of the Covenant. In these respects therefore the communication is inadmissible under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant, ratione materiae.

13.4 M.A.'s additional claim that the extradition proceedings, initiated by Italy while he was living in France, constitute a violation of the Covenant, is without foundation. There is no provision of the Covenant making it unlawful for a State party to seek extradition of a person from another country. The claim is therefore inadmissible under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant, ratione materiae.

14. The Human Rights Committee therefore decides:

The communication is inadmissible.

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