E. Communication No. 266/1987, I. M. v. Italy (Decision of 23 March 1989, adopted at the thirty-fifth session)

Submitted by: A. M. [name deleted]

Alleged victim: I. M. [author's brother, deceased]

State party concerned: Italy

Date of communication: 5 November 1987 (date of initial letter)

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

Meeting on 23 March 1989,

Adopts the following:

Decision on admissibility*

1. The author of the communication (initial submission postmarked 5 November 1987; further letters dated 20 June, 4 August, 5 and 28 September 1988 and 7 February 1989) is A. M., a Spanish citizen residing at Geneva, Switzerland. He submits the communication on behalf of his deceased brother, I. M., born on 18 August 1941 in Spain, who died in an Italian prison on 26 August 1987 following a hunger strike. He alleges that Italian authorities violated his brother's human rights.

2.1 The author states that his brother was arrested in Milan on 6 April 1987 on suspicion of involvement in the traffic of drugs. He was allegedly not visited by the investigating officer, Judge A. C., until 3 June 1987, that is, almost two months after the beginning of his detention. It appears that this interrogation proved inconclusive and that no formal charges were raised, so that I. M. requested a second interrogation in order to establish his innocence. However, no further interrogation was granted and I. M. protested against his continued detention by going on a hunger strike on 7 July 1987. During this period he was allegedly seen only once by the prison doctors, when he was transferred to the hospital, only to be returned to the prison because his condition was not considered sufficiently serious. The doctors recommended that he be fed intravenously, but this recommendation was not implemented.

2.2 I. M.'s companion, M. R. R., was able to visit him every 15 days at the prison. When she saw him on 20 August, he allegedly complained that his head had been injured and that he could not see well. In spite of her insistence, he was not taken to the hospital until 24 August, when he was already in a coma, and he died two days later.

2.3 With regard to the exhaustion of domestic remedies, the author and M. R. R. have addressed a complaint to the Italian Attorney-General. The Italian lawyers

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* Pursuant to rule 85 of the provisional rules of procedure, Committee member Fausto Pocar did not take part in the adoption of the decision.

responsible for the case have informed the author that a criminal investigation has been opened against the doctors at the prison and at the hospital.

3. By decision of 15 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the provisional rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. The State party was further requested to provide a number of clarifications concerning the case of I. M. The author himself was requested to specify the nature of the complaint submitted to the Italian Attorney-General and the current stage of the investigations.

4. In a letter dated 20 June 1988, the author gives fuller information in reply to the questions raised by the Working Group. He states that in the complaint made to the Italian Attorney-General the charge is "involuntary homicide". As to the current stage of the investigation, the author indicates that they are still pending and forwards copies of his correspondence with the Italian authorities and his counsel at Milan.

5.1 In its submission under rule 91 of the provisional rules of procedure, dated 4 August 1988, the State party provides the clarifications requested by the Working Group and objects to the admissibility of the communication. Recapitulating the facts, it explains that the alleged victim:

> "was arrested on 6 April 1987 by the Anti-Drug Operations Unit of the Fraud Squad for the offences covered in articles 495 and 473 of the Penal Code and taken into custody (fermo) by the judicial police on the strong suspicion of having committed the offences referred to in articles 71 and 75 of Act No. 685 of 22 December 1975 (traffic in significant quantities of drugs and unlawful association with persons engaged in drug traffic). The official notices of the arrest and preventive detention were formally drafted in the name of R. F. J. v. D., appearing in the identity papers produced by the accused; the Fraud Squad immediately established that the same individual had been identified on a previous occasion as I. M. and on another occasion as J. L."

5.2 The State party adds that I. M. was duly notified of the criminal activities: "ascribed to him at the first interrogation carried out by the Deputy Prosecutor of the Milan Prosecutor's Office, Dr. I. B., on 11 April 1987 at 9.20 a.m. At the end of the interrogation I. M. was served with arrest warrant No. 634/87 D, issued on 10 April 1987 by the aforementioned magistrate, which contained the charges and the statement of grounds. I. M. received a further formal notice of the charges against him by arrest warrant No. 508/87 F, issued on 26 May 1987 by the examining magistrate Dr. A. C.". I. M. was interrogated on two subsequent occasions by the examining magistrate, Dr. A. C., on 3 and 8 June 1987.

5.3 I. M.'s request for a further interview with the examining magistrate at the time he began his hunger strike was rejected by the latter on 21 August 1987. She pointed out that the accused had already been heard on three occasions and for many hours about the activities that had led to his arrest, that court proceedings were suspended for the vacation period and that, in any event, the defendant could have addressed to her, under article 35 of the prison regulations, any request or statement which he might have considered useful for his defence. I. M.'s companion, M. R. R., had been authorized to visit the defendant first by the Deputy Prosecutor and subsequently by the examining magistrate, as can be ascertained from

a statement sent by her to the Attorney-General on 28 August 1987. This permission, according to the State party, was not withdrawn during the month of August; on 17 August 1987, I. M. had declined to see her because of his state of health.

5.4 The State party considers that the events described above "point to the fact that the responsibility for I. M.'s tragic end cannot be attributed to the examining magistrate, who showed herself to be responsive, in the context of her competence and in conformity with the requirements of the investigation, to the requests made by members of the prisoner's family".

5.5 The State party further adds that immediately after I. M.'s death the examining magistrate prepared and submitted a report detailing the facts of the case to the Attorney-General's office, which instituted criminal proceedings against the persons alleged to be responsible for the death of the victim. Pre-trial proceedings are currently under way, and it is submitted that they are progressing normally.

5.6 The State party recalls that the author's principal complaint relates to the fact that the victim's request for a further interview with the examining magistrate had been rejected, and emphasizes that there is no obligation on the part of the magistrate to grant such requests, and that the Code of Penal Procedure, which exhaustively regulates the circumstances and modalities of such requests (art. 190), does not provide for the possibility of an appeal. With the exception of the initial interrogation of the prisoner (arts. 245 and 365 of the Penal Code) for the purpose of enabling him to respond to the charge and authorize his defence, the magistrate has no obligation to hear the accused on several occasions. On the contrary, under article 299 of the Code of Penal Procedure, the examining magistrate "has the obligation to execute promptly all - and solely - those acts which appear necessary in order to establish the truth in the light of the evidence collected and having regard to the progress of the investigation". The authorities thus enjoy discretionary power in ascertaining whether a further interrogation of the defendant is necessary.

5.7 Finally, the State party points out that the author retains the right, under article 91 of the Code of Penal Procedure, to introduce a civil action against the individuals held to be responsible for his brother's death.

6.1 Commenting on the State party's submission, the author, in a letter dated 28 September 1988, does not contest that his brother's companion, M. R. R., had been authorized by the magistrate to visit the deceased in prison, but contends that the difficulties M. R. R. encountered before she could see him either in the prison or in the hospital were solely attributable to the prison authorities. Thus, he explains that between 17 and 20 August 1987, M. R. R. was turned away under spurious pretexts at the prison gates on several occasions until, at noon on 20 August 1987, she could finally see I. M. The victim, at that time, already was confined to a wheelchair and had visible co-ordination problems.

6.2 In spite of her repeated requests, M. R. R. was unable to speak with the prison director or assistant director. An intervention on the part of the Spanish Consul in Milan did not produce tangible results either. On 24 August 1987, M. R. R. again asked to see her companion. In the prison's visitors' room, she was told by an inmate that I. M. was still in the prison, although in a life-threatening condition. Subsequently, a guard told her that I. M. had just

been transferred to a hospital. At the hospital she was told that the magistrate's authorisation to visit him was invalid and that she needed an authorization by the prison director. The director's assistant cursorily showed her a paper alleging that I. M. no longer wanted to see her, but after emphatic requests, she was able to see him on 25 August 1987. I. M. did not recognize her because he was in a coma, and the doctor on duty told her that he had been transferred to the hospital much too late. The author claims that if the Assistant Director of the prison alleged that I. M. was in "good physical health", this was not only negligence but incompetence. Similarly, he contends that the doctors, both in the prison and in the hospital, acted negligently in that they were, or seemed to be, incapable of giving I. M. the appropriate treatment.

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

7.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 Inasmuch as the exhaustion of domestic remedies is concerned, the Committee observes that it would be open to the author, pursuant to article 91 of the Italian Code of Criminal Procedure, to introduce a civil action against those alleged to be responsible for his brother's death. The Committee has further noted the State party's uncontested claim that it did institute criminal proceedings against the individuals held to be responsible for the death of I. M., on 26 August 1987, and that the investigations are proceeding normally. The Committee concludes that available domestic remedies have not been exhausted and that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

7.4 With respect to the author's complaint that the alleged victim was denied the opportunity of a further interview with the examining magistrate, the Committee finds that this raises no issue under the Covenant.

8. The Human Rights Committee therefore decides:

(a) The communication is inadmissible;

(b) This decision shall be communicated to the author and to the State party.