AS TO THE ADMISSIBILITY OF

Application No. 22671/93
by G.L.
against Italy

The European Commission of Human Rights (First Chamber) sitting in private on 17 January 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
L. LOUCAIDES
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 3 May 1993 by G.L. against Italy and registered on 23 September 1993 under file No. 22671/93;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 15 June 1995 and the observations in reply submitted by the applicant on 16 September 1995;
- the additional observations submitted by the applicant on 20 March 1996 and by the respondent Government on 30 May 1996 ;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Italian national, born in 1927 and residing in Pavia.

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

a) The circumstances of the case

The applicant owns an apartment in Milan, which he had let at a low rent pursuant to a 1969 law on rent control ("equo canone"). His tenant owns a shop and is shopkeeper together with his family.

On 18 November 1985, the applicant gave his tenant notice to quit

the flat upon expiry of the lease on 28 December 1988; the tenant refused to vacate the premises.

In a writ served on the tenant on 22 January 1988, the applicant reiterated the notice to quit and summoned his tenant to appear before the Milan magistrate (Pretore); by judgment of 1 February 1988, the magistrate formally confirmed the notice to quit and set the date of eviction at 1 September 1989. The decision was made enforceable on 22 February 1988.

On 25 August 1989 the applicant served on the tenant the order ("precetto") to vacate the apartment.

On 6 November 1989, he served on the tenant the warning ("significazione di sfratto") that on 13 November 1989 a bailiff would enforce the eviction.

On 13 November 1989, the bailiff adjourned the eviction to 19 January 1990, pursuant to the instructions given by the Milan Prefect on 8 May 1989. Further attempts to evict the tenant (on 20 February, 7 April, 15 November 1990, were unsuccessful.

On 15 September 1992, the applicant served on the tenant a second order to vacate the apartment, and, on 28 October 1992, the warning that on 20 November 1992 a bailiff would enforce the eviction. The attempts made by the bailiff on 20 November 1992 and 25 February 1993 were unsuccessful.

By a deed of 20 September 1993 the applicant made a solemn declaration under Law no. 899 of 23 December 1986 that he needed to recover the flat so that his son could live there. He said that his case should accordingly be given priority.

However, the attempts made by the bailiff to evict the tenant on 14 October 1993, 18 January, 12 April, 28 June and 18 October 1994, 31 January, 13 April and 18 July 1995, were unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order to vacate.

So far, the applicant has not recovered possession of his flat.

As of May 1995, the tenant has ceased the payment of the condominium expenses.

b) Relevant domestic law and practice

Since 1947 the public authorities in Italy have frequently intervened in residential tenancy legislation with the aim of controlling rents. This has been achieved by rent freezes (occasionally relaxed when the Government decreed statutory increases), by the statutory extension of all current leases and by the postponement, suspension or staggering of evictions.

I. As regards the statutory extension of tenancies

The last statutory extension of all current leases, with the exception of certain cases specifically prescribed by law, was introduced by Law No. 392 of 27 July 1978 and remained in force until 31 December 1982, 30 June 1983 or 31 December 1983 depending on the dates on which the leases were signed.

It should, however, be noted that, as regards buildings used for purposes other than housing, the statutory extension of current leases prescribed by Article 1 para. 9 of Law No. 118 of 5 April 1985 was declared unconstitutional in a decision (No. 108) handed down by the Constitutional Court on 23 April 1986. In its decision the court held that the statutory restrictions imposed on property rights under

Article 42 of the Constitution, with a view to ensuring social justice, make it possible to regard controls imposing restrictions as legitimate, provided that such controls are of an exceptional and temporary nature" but that "the act of perpetuating such restrictions was incompatible with the protection of property rights embodied in Article 42 of the Constitution.

In its decision, the Constitutional Court also pointed out that the statutory six-month extension of leases on buildings used for purposes other than housing, prescribed by Law No. 118, should not be considered in isolation but within the context of the entire system of tenancy regulations. The court drew particular attention to the fact that this extension succeeded other statutory extensions and could mark the beginning of new restrictions on freedom of contract in this field. Moreover, the statutory extension of leases had the effect of prolonging contracts in which the rent, notwithstanding the increases allowed in accordance with rises in the cost of living, "was far removed from the current socio-economic conditions". Further, the law concerned did not give the lessor the possibility to regain possession of the property except in cases of absolute necessity.

The Constitutional Court also held that Law No. 118, inasmuch as it provided for a blanket extension of current leases without taking into consideration the particular economic circumstances of lessors and lessees - as would have been necessary to ensure social justice -, infringed the principle of the equality of citizens before the law embodied in Article 3 of the Constitution.

II. As regards enforcement

Numerous provisions have established rules for the postponement, suspension or staggering of judicial decisions ordering tenants to vacate the premises they occupy (ordinanze di sfratto).

A first suspension was introduced by Legislative Decree No. 795 of 1 December 1984. The provisions set forth therein were incorporated in Legislative Decree No. 12 of 7 February 1985, which became Law No. 118 of 5 April 1985, covering the period from 1 December 1984 to 30 June 1985. This legislation also provided for the staggered postponement of enforced evictions to 1 July 1985, 30 September 1985, 30 November 1985 or 31 January 1986 respectively, depending on the date on which the judgment recording the end of the lease had become enforceable.

Section 1(3) of Law no. 118 stipulated that such suspensions were not applicable if repossession of the premises had been ordered because arrears of rent were owed. Similarly, no suspension could be ordered in the following cases:

(i) where, after conclusion of the contract, the lessor required the property for his own use or for that of his spouse or his children or grandchildren, for residential, commercial or professional purposes, or where a lessor who intended to use the premises for one of the above-mentioned purposes (a) offered the tenant similar accommodation at a rent which he could afford and which was not more than 20% higher than the previous rent and (b) undertook to pay the costs of the tenant's removal (Article 59, first subsection, paragraphs 1, 2, 7 and 8 of Law no. 392 of 27 July 1978 ("Law no. 392") and

(ii) where, inter alia, a lessor urgently needed to regain possession of his flat as accommodation for himself, his children or his ascendants (Article 3, first paragraph sub-paragraphs 1, 2, 4 and 5 of Legislative Decree No. 629 of 15 December 1979, which became Law No. 25 of 15 February 1980 ("Law no. 25").

A second suspension was introduced by Legislative Decree No. 708 of 29 October 1986, which became Law No. 899 of 23 December 1986.

It covered the period from 29 October 1986 to 31 March 1987 and provided for the same exceptions as the provisions in the preceding legislation.

Law no. 899 of 23 December 1986 also established that the Prefect was competent to determine the criteria for authorising police assistance in evicting recalcitrant tenants, after consulting a committee including representatives of both tenants and landlords.

Section 3 (5 bis) of Law no. 899 of 23 December 1986 also provided for the automatic suspension until 31 December 1987 of forcible evictions of tenants entitled to subsided housing.

A third suspension was introduced by Legislative Decree No. 26 of 8 February 1988, which became Law No. 108 of 8 April 1988. It first covered the period from 8 February to 30 September 1988 and was subsequently extended from the latter date to 31 December 1988.

A fourth suspension was introduced by Legislative Decree No. 551 of 30 December 1988, which became Law No. 61 of 21 February 1989, and covered the period up to 30 April 1989. In regions suffering from natural disasters the suspension remained in force until 31 December 1989.

With the exception of urgent cases, this Law also provided that police assistance in enforcing evictions only be authorised in gradual stages over a period of forty-eight months as of 1 January 1990 and set up a prefectural committee responsible for deciding which cases most urgently required police intervention. Consequently the date on which owners could regain possession of their flats could be postponed to 31 December 1993.

With the exception of urgent cases, this Law also provided that police assistance in enforcing evictions only be authorised in gradual stages over a period of forty-eight months as of 1 January 1990 and set up a prefectural committee responsible for deciding which cases most urgently required police intervention. Among these urgent cases there were those when the lessor urgently needed to regain possession of his flat as accommodation for himself, his spouse, his children or his ascendants. For his case to be dealt with in priority, the lessor had to make a solemn declaration.

The system of staggered resumption of forcible evictions has been extended by a series of law-decrees: law-decree no. 723 of 20 December 1994 extended the date of resumption to 31 December 1995 ; law-decree of 23 December 1995 extended this date to 29 February 1996. Law-decrees no. 81/1996 and 335/1996 have extended that date to 20 June and 31 December 1996 respectively.

COMPLAINTS

1. The applicant alleges that the fact that for a prolonged period it has been impossible for him to recover possession of his flat, owing to the implementation of emergency legislative provisions on residential property leases, has infringed his right to the peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1.

2. Relying on Article 6 para. 1 of the Convention, the applicant alleges that his case has not been heard within a reasonable time on account of the implementation of legislative provisions suspending the enforcement of evictions.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 3 May 1993 and registered on 23 September 1993.

On 22 February 1995 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 15 June 1995. The applicant replied on 16 September 1995.

On 13 March 1996, the parties were requested to submit their additional observations following the judgments of the European Court of Human Rights in the cases Spadea-Scalabrino and Scollo v. Italy, delivered on 28 September 1995. The applicant and the respondent Government submitted their observations on 20 March 1996 and on 30 May 1996 respectively. The applicant submitted further additional observations in reply to the Government on 16 June 1996.

THE LAW

1. The applicant complains about the prolonged impossibility for him to recover possession of his apartment, owing to the implementation of emergency legislative provisions on residential property leases.

He alleges a violation of Article 1 of Protocol No. 1 (P1-1) to the Convention, which provides as follows:

> "Every natural and legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

The Government first allege that the applicant failed to support his allegation that he has made the solemn declaration under Law no. 899 of 23 December 1986. The present case would thus be similar to the Spadea and Scalabrino case (Eur. Court HR, Spadea and Scalabrino v. Italy judgment of 28 September 1995, Series A no. 315-B), in which the Court has found no violation of Article 1 of Protocol No. 1 (P1-1) on grounds that the measures taken were justified from the social point of view in order to safeguard public order and to protect tenants.

The Government then argue that, should the applicant provide copy of such declaration, the application would then have to be declared inadmissible for failure to exhaust domestic remedies, the applicant having failed to appeal to the regional administrative court and then to the supreme administrative court (Consiglio di Stato) against the refusal by the Prefect to grant him priority in the assistance of the police.

The applicant disputes the Government's allegations and in contrast claims that the present case is similar to the Scollo case (Eur. Court HR, Scollo v. Italy judgment of 28 September 1995, Series A no. 315-C); in particular, he claims that his tenant is undoubtedly well-off and does not deserve any special protection by the authorities.

The Commission observes that it appears from the affidavits drawn up by the bailiff starting from 14 October 1993 that the eviction was

considered as deserving priority ("sfratto per necessità"); the solemn declaration was attached to the affidavit on 18 October 1994.

As regards the Government's objection, the Commission recalls the Convention organs' established case-law to the effect that the obligation to exhaust domestic remedies requires only that an applicant make normal use of remedies that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they lack the requisite accessibility and effectiveness. It falls for the respondent State to establish that these various conditions are satisfied (see Eur. Court HR, De Jong, Baljet and Van der Brink v. the Netherlands judgment of 22 May 1984, Series A no. 77, p. 19, para. 39; amongst others, No. 14807/89, Dec. 12.2.92, D.R. 72, p. 148; No. 12742/87, Dec. 3.5.89, D.R. 61, p. 206 and No. 14992/89, Dec. 7.6.90, D.R. 66, p. 247).

In the present case, the Commission first underlines that the Prefect enjoys of a very wide margin of appreciation in granting the assistance of the police in evicting recalcitrant tenants. The Commission therefore doubts that administrative courts would overrule the Prefect's decisions in this respect. In addition, the Commission notes that the respondent Government were unable to cite any precedent: accordingly, they have not shown that this remedy could constitute an available and sufficient remedy that the applicant ought to have exhausted.

It follows that the Government's objection as to the exhaustion of domestic remedies must be rejected.

As to the merits, the Commission considers that the question of whether the applicant's failure to recover possession of his flat constitutes a breach of the rights secured to him by Article 1 of Protocol No. 1 (P1-1), raises questions of fact and law of such complexity that their determination should depend on an examination on the merits. It follows that this complaint cannot be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other grounds for declaring it inadmissible has been established.

2. The applicant further complains about the length of the enforcement proceedings. He relies on Article 6 para. 1 (Art. 6-1) of the Convention which provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time ...".

The Government did not submit any observations on this point.

The Commission finds that this complaint raises serious questions of fact and law which are of such complexity that their determination should depend on an examination on the merits. It follows that it cannot be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

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| M.F. BUQUICCHIO | J. LIDDY |
| Secretary | President |
| to the First Chamber | of the First Chamber |