AS TO THE ADMISSIBILITY OF

Application No. 22774/93
by IMMOBILIARE SAFFI
against Italy

The European Commission of Human Rights sitting in private on 6 March 1997, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
J.-C. GEUS
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 23 September 1993 by IMMOBILIARE SAFFI against Italy and registered on 15 October 1993 under file No. 22774/93 ;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Italian building society, having its registered office in Livorno and acting through its managing director, Mr. Rodolfo Cagliata.

Before the Commission, it is represented by Mr. Nino Amadei, a lawyer practising in Livorno.

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

Company I.B., a building society, was the owner of an apartment in Livorno, which it had let to L.B.

By registered letter of 20 april 1983, company I.B. informed the tenant of its intention to terminate the lease on its expiry, on 31 December 1983.

In November 1983, company I.B. served on the tenant a notice to quit ("disdetta"); the tenant refused to vacate the premises.

In a writ served on the tenant in November 1983, company I.B. reiterated the notice to quit and summoned the tenant to appear before the Livorno magistrate (Pretore); by judgment of 21 November 1983, the latter formally confirmed the notice to quit and set the date of eviction at 30 September 1984.

The decision was made enforceable on 7 December 1983.

On 30 May 1985, company I.B. served on the tenant the order ("precetto") to vacate the flat.

On 26 September 1985, it served on the tenant the warning ("significazione di sfratto") that on 19 November 1985 a bailiff would enforce the eviction.

Several attempts made by the bailiff on 19 November 1985, 28 March 1986, 30 September 1986, 17 December 1986, 4 April 1987 and 21 December 1987 were unsuccessful.

Following a corporate merger with, inter alia, company I.B., in 1988 the applicant company became the owner of the apartment at issue. It continued the enforcement proceedings in its capacity as owner.

Thereafter, numerous attempts (15 December 1988, 9 June 1989, 30 October 1989, 30 October 1990, 17 February 1991, 17 May 1991, 18 May 1992, 15 May 1993, 8 February 1994) by a bailiff to evict the tenant were unsuccessful, as the applicant company was never granted the assistance of the police in enforcing the order for possession, pursuant to the subsequent laws on suspension of enforcement of evictions.

So far, the applicant company has not succeeded in evicting the tenant from its apartment.

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, made 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 subsidised 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 should 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 company alleges that the fact that for a prolonged period it has been impossible for it to recover possession of its flat, owing to the implementation of emergency legislative provisions on residential property leases, has infringed its right to the peaceful enjoyment of its possessions guaranteed by Article 1 of Protocol no. 1.

2. Relying on Article 6 para. 1 of the Convention, the applicant company alleges that its 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 23 November 1989 and registered on 19 December 1989.

On 11 January 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 21 March 1995, after an extension of the time-limit fixed for that purpose. The applicant replied on 19 April 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 Spadea and Scalabrino v. Italy and Scollo v.Italy cases, delivered on 28 September 1995. The applicant and the respondent Government submitted their observations on 29 March and on 4 April 1996 respectively.

THE LAW

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

It 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."

a) As to the exhaustion of domestic remedies

The Government first submit that the applicant company has not exhausted the domestic remedies open to it under Italian law in that it 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 it priority in the assistance of the police. In the course of these proceedings, the applicant company could have raised the question of the constitutionality of the disputed measures by referring to Article 42 of the Italian Constitution which recognises and safeguards property rights.

The applicant company contends the Government's objections. It first argues that in its case there has been no formal refusal to grant the assistance of the police, so that there is no decision against which it could be possible to apply to courts, either administrative or ordinary. As to the possibility of raising a question of constitutionality, the applicant company claims that this remedy would not be effective, given the attitude of the Constitutional Court which seems to accept the Government's conduct in the field of property rights.

As regards the first part of the Government's objections, the Commission recalls the Convention organs' constant 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 to the respondent State to establish that these various conditions are satisfied (see Eur. Court HR, De Jong, Baljet and Van den Brink v. the Netherlands judgment of 22 May 1984, Series A no. 77, p. 19, para. 39; amongst others, nos. 14807/89, dec. 12.2.92, D.R. 72, p. 148; 12742/87, dec. 3.5.89, D.R. 61, p. 206 and 14992/89, dec. 7.6.90, D.R. 66, p. 247).

In the present case, the Commission first underlines that the Prefect enjoys 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. The Commission further 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.

As regards the second part of the Government's objections, the Commission recalls that when an individual, as under Italian law, is not entitled to apply directly to the Constitutional Court for a review of the constitutionality of certain legislation, he does not have available to him in this respect a remedy whose exhaustion is required under Article 26 (Art. 26) of the Convention (see Eur. Court HR, Brozicek v. Italy judgment of 19 December 1989, Series A no. 167, p. 16, par. 34; Padovani v. Italy judgment of 26 February 1993, Series A no. 257-B, p. 19, par. 20).

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

b) As to the merits

As regards the substance of the case, the Government consider that the disputed situation should be examined under Article 1 of Protocol no. 1 (P1-1) which provides that "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...".

The Government point out that the disputed measures were adopted to deal with an exceptional situation due on the one hand to a shortage of reasonably priced housing in certain municipalities and on the other hand to a large increase in demand resulting from the expiry of the statutory extension of current leases on 31 December 1982, 30 June 1983 or 31 December 1983, depending on the dates on which the contracts of lease were signed. In the Government's opinion the measures taken were justified from the social point of view and in order to safeguard public order and were therefore compatible with the general interest.

The applicant company disputes the Government's arguments. It points out that the exceptional situation referred to by the Italian Government, and which entails restrictions on property rights, cannot be considered as exceptional, as it keeps being extended.

The Commission considers that the question of whether the applicant company's failure to recover possession of its flat constituted a breach of the rights secured to it 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 have been

established.

2. The applicant company further complains about the length of the enforcement proceedings. It 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 claim that no delay in the procedure is attributable to the judicial authorities, as the length of the procedure only depends on the Prefect. There would thus be no violation of the invoked provision.

The applicant company contends that a length of over twelve years cannot be regarded as "reasonable" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission has considered the submissions of the parties. It finds that this complaint raises questions of fact and law 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 grounds for declaring it inadmissible have been established.

For these reasons, the Commission, by a majority,

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

H.C. KRÜGER	S. TRECHSEL
Secretary	President
to the Commission	of the Commission