CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 36448/97
by Natale MARZARI
against Italy

The European Court of Human Rights (Second Section) sitting on 4 May 1999 as a Chamber composed of

Mr C. Rozakis, *President*,
Mr M. Fischbach,
Mr B. Conforti,
Mr P. Lorenzen,
Mrs M. Tsatsa-Nikolovska,
Mr A.B. Baka,
Mr E. Levits, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 26 May 1997 by Natale MARZARI against Italy and registered on 11 June 1997 under file no. 36448/97;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 19 October 1998 and the observations in reply submitted by the applicants on 26 November 1998;

Having deliberated;

Decides as follows:

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THE FACTS

The applicant is an Italian national, born in 1944 and currently residing in Trento.

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

The applicant started suffering from a rare and serious illness called metabolic myopathy in 1965. Metabolic myopathy provokes physical exhaustion, severe myalgia, difficulties in breathing, loss of the power of speech. The applicant in particular suffers from a "thermal disability" i.e. cold temperatures and changes in temperature cause him intense muscular pain. He is often forced to use a wheelchair.

However, the applicant's illness was not diagnosed until 1979. Prior to that date, the applicant was thought to be a psychopath.

In 1980 the applicant was recognised as 100% disabled and started receiving a pension as a result.

The applicant embarked on a series of actions and demonstration, including hunger strikes, in order to obtain the removal of architectural obstructions (*barriere architettoniche*) and to obtain some form of social help.

On an unspecified date in 1989, as a consequence of one of these actions, the applicant was allegedly ill-treated by the police. On 28 December 1989 the applicant filed a criminal complaint against the police in relation to the above facts, which was however dismissed.

The applicant's detention

On an unspecified date the applicant requested the President of the Province of Trento to enforce provincial law no. 43 of 17 December 1993, which, inter alia, imposes certain obligations upon the provincial social security service to help those suffering from metabolic myopathy. The President of the Province of Trento filed a criminal complaint against the applicant for extortion, on the ground that he had tried to force the administrative authorities to favour him. On 29 June 1995, the applicant was arrested.

On 14 August 1995, after two medical experts' reports had established that the applicant's physical condition was not compatible with detention, he was released. The charge against him was then converted from extortion into "arbitrary and violent exercise of his rights" (*esercizio arbitrario delle proprie ragioni con violenza alle persone*), but later dropped, no formal complaint having been lodged against him on this charge (*non doversi procedere per difetto di querela*).

On 20 June 1997 the Trento Court of Appeal awarded the applicant compensation (7,000,000 Italian lira) for the 58-day unfair detention (*ingiusta detenzione*), on the ground that the charge against him had been dropped and in consideration of his poor state of health.

However, on 18 July 1997 the Ministry of the Treasury lodged an appeal against this decision to the Court of Cassation. These proceedings are currently pending.

The applicant's accommodation

Since 1973 the applicant had lived in a privately rented apartment in via Suffragio no. 53 (hereinafter referred to as "the first apartment"), which he had adapted, at his own expense, to his needs in view of his pathology.

In 1988 the Trentino Institute for Housing (*Istituto Trentino per l'Edilizia Abitativa*, hereinafter referred to as "ITEA") expropriated the building. ITEA intended to renovate the building, and tried therefore to find another suitable accommodation for the applicant, who demanded the respect of certain criteria and technical characteristics.

On 8 August 1991, an apartment located in via Suffragio no. 63 (hereinafter referred to as "the second apartment") was allocated to the applicant by ITEA; the applicant moved into it, despite the fact that he considered it to be inadequate to his needs.

On 21 January 1992 the applicant and ITEA entered into the relevant lease contract; the rent was fixed at 64,500 lira per month.

In 1992 provincial law no. 21/1992 was enacted, according to which ITEA has an obligation to provide persons who are recognised as 100% disabled with accommodation meeting their specific needs.

In 1993 the applicant ceased the payment of the rent, demanding that certain works be carried out in the apartment with a view to making it fit for his needs.

On 30 April 1993 ITEA instructed a lawyer to commence proceedings with a view to recovering the arrears of rent from the applicant and to recovering possession of the apartment. On an unspecified date, the Trento Magistrate's Court formally confirmed the notice to quit and set the date of the applicant's eviction at 22 July 1993.

On 26 May 1993 ITEA submitted to the applicant a plan of payments of the arrears over twelve instalments; this proposal was refused.

On 14 July 1993 ITEA decided to refrain from requesting the enforcement of the Magistrate's Court's order for possession for six months, in consideration of the applicant's health condition and of his alleged credit towards ITEA on account of the expenses he had incurred in order to adapt the apartment to his needs.

On 29 September 1993 ITEA acknowledged part of the amounts claimed by the applicant.

On 13 December 1993, the applicant paid part of his outstanding debt to ITEA.

In connection with the remainder of the applicant's debt and for the legal costs and expenses incurred by ITEA, the enforcement of the eviction order was pursued and fixed at 24 June 1994.

On 11 March 1994 the applicant, after having occupied as a protest the hall of the Province Building, poured 400 litres of petrol around the building where his flat is. He was

arrested and subsequently convicted. In the meantime, the other occupants of the building had to vacate it for a week.

On 17 March 1994 ITEA submitted to the applicant another plan of payment of the arrears of rent and legal costs and expenses. The applicant replied that he was ready to pay for the arrears of rent but not for the legal costs and expenses.

On 16 June 1994 ITEA instructed its lawyer to pursue the applicant's eviction.

On 21 June 1994 ITEA requested the assistance of the Provincial Body for Health Services of the Autonomous Province of Trento (*Azienda Provinciale per i Servizi Sanitari della Provincia Autonoma di Trento*), which accepted.

The eviction was postponed until 12 September 1994. The applicant's lawyer requested ITEA to refrain form the eviction so that he could find a solution. The new date for the eviction was fixed at 22 November 1994.

On 16 and 23 November 1994, however, ITEA decided to stay the eviction until 30 June 1995.

On 5 January 1995 ITEA requested the applicant to demolish certain parts he had illegally built on his balcony, in pursuance of an order issued by the municipality on 29 December 1994.

On 21 June 1995 and 10 October 1995 ITEA decided to stay the applicant's eviction.

On 29 May and 28 August 1996 ITEA decided to stay the applicant's eviction for six more months, pending the proceedings opened by the Trento municipality with a view to withdrawing the allocation of the second apartment to the applicant.

On 4 November 1996 the Trento City Council revoked the allocation of the apartment to the applicant pursuant to provincial law no. 21/92, on account of the repeated breaches of the terms of contract by the applicant.

The applicant alleges that he was not served notice of this decision. The Government maintain that he received notification of it on 30 December 1996 and submit that the applicant failed to lodge an appeal to the competent Provincial Committee (*Commissione Provinciale di Vigilanza*) and was thus informed, on 5 February 1997, that the decision on withdrawal was final but that he had the possibility of requesting that its enforcement be suspended.

In a report issued on 5 September 1997 by the Provincial Body for Health Services of the Autonomous Province of Trento it was stated that the second apartment did not meet the requirements laid down in the relevant legislation. In particular: a) access to the WC is difficult for a disabled person; b) the bathtub is inadequate for the hydrotherapy needed by the applicant; c) the windows are not triple glazed; d) there is no structural separation between the apartment and the loft; d) the roof is not adequately insulated due to the presence of cracks.

On 1 October 1997 the applicant's eviction was stayed for six more months. ITEA inquired whether the decision on withdrawal could be suspended but the Province informed it that it was not possible in the absence of a request by the applicant. By a note of 26 January 1998, the Trento Municipality confirmed that the applicant had never requested the suspension of the decision on withdrawal.

On 28 January 1998 the applicant was evicted. He went to live in a camper van parked in the main square of Trento.

On 25 February 1998 the Trento Municipality informed the Provincial Body for Health Services of the Autonomous Province of Trento to be ready to allocate to the applicant, upon his request, a place in a home for the sick and to request the Commission for the study of metabolic diseases (*Commissione di studio delle malattie metaboliche*), set up by the Province of Trento and composed of six medical doctors, to express its opinion as to whether the applicant needed to be accommodated in one of these homes.

On 28 February 1998 the applicant filed an application with the Magistrate's Court of Trento requesting, inter alia, that the second apartment be adapted to his needs and that he be reinstated in it. However, by an ordinance issued on 11 April 1998 the Trento Magistrate's Court declared its incompetence to grant the applicant's requests and thus rejected them. The court pointed out that it was for the administrative courts to order ITEA to comply with its obligation and to provide the applicant with an adequate apartment.

On 3 March 1998 the Commission for the study of metabolic diseases issued a report on the applicant's case listing the requirements which the applicant's accommodation should meet.

In connection with the arrears of rent, on 5 March 1998 the Trento Magistrate's Court issued an injunction of payment.

On 9 March 1998 the provincial body on residential housing (*Servizio Edilizia Abitativa della Provincia autonoma di Trento*) stated that it would not be possible to allocate another apartment to the applicant, on account of his insolvency.

On 19 March 1998 the applicant was hospitalised in Trento; his condition has dramatically deteriorated on account of his living in an inadequate environment (camper van). On 26 April 1998 the applicant went on hunger strike. In a report issued on 15 June 1998 by a commission of doctors from the hospital, it was stated that the applicant should be discharged from hospital due to the lack of facilities adequate to his illness and that therefore a solution to his housing problem was urgently needed.

On 1 July 1998 the applicant's moveable items were seized from the second apartment with a view to recovering the arrears of rent owed by the applicant.

On 2 July 1998 the health and social affairs councillor's office (*assessorato alla sanità e attività sociali*) of Trento Province decided that it would try to find an institution which would accept to bear the costs for the rent and maintenance of the apartment for the applicant, pursuant to Article 30 of Law no. 21/92. The apartment would thus be formally allocated to this institution, which would then make it available for the applicant. On 27 July 1998 a representative of the councillor's office was formally appointed to this task.

In co-operation with the Trento municipality, six apartments owned by ITEA were found; the Commission for the study of metabolic diseases was requested to inspect them with a view to finding a suitable one.

By a note of 11 August 1998, the Commission for the study of metabolic diseases stated to have found that the one in Aldeno (hereinafter referred to as "the third apartment") was suitable. The applicant was informed accordingly.

By a decision of 18 February 1999, the *Comprensorio Valle dell'Adige* of the Trento Province allocated the third apartment to the applicant. The Commission for the study of metabolic diseases pointed out that certain works needed to be carried out in the third apartment with a view to making it fully adequate to the applicant's medical condition, and the *Comprensorio* stated that it would proceed with the works after the applicant's formal acceptance of the apartment.

The applicant however refused to accept the third apartment and to leave the hospital.

On 18 March 1999 the Director of the Trento Hospital, having learned that a suitable apartment had been put at the applicant's disposal, requested the latter to leave the hospital, as his presence there was not needed any more and the place he occupies in the hospital was necessary for other patients.

On 24 March 1999 the applicant was formally discharged from hospital. The Director of the Hospital has requested the police to evict the applicant.

COMPLAINTS

1. The applicant complains about the local administrative authorities' failure to provide him with accommodation adequate to his disability, notwithstanding that such an obligation is established by the relevant provincial legislation and that the authorities have committed themselves to finding a solution to his housing problem.

2. The applicant also complains that, in August 1989, on 11 February 1989 and on 28 December 1989, he was ill-treated by the police.

3. The applicant finally complains about his unfair detention.

PROCEDURE

The application was introduced on 26 May 1997 and registered on 11 June 1997.

On 15 September 1998, the European Commission of Human Rights decided to give notice of the applicant's complaint relating to the failure to provide him with a suitable accommodation to the respondent Government, and invited them to submit their observations on its admissibility and merits.

The Government submitted their observations on 29 October 1998, to which the applicant replied on 26 November 1998. The Government submitted further observations and

information on 30 December 1998 and on 19 February 1999, and the applicant on 3 December 1998, 22 March 1999 and 10 April 1999.

By virtue of Article 5 § 2 of Protocol No. 11 to the Convention, which entered into force on 1 November 1998, the application shall thereafter be examined by the European Court of Human Rights.

THE LAW

1. The applicant complains in the first place that the local administrative authorities have evicted him and failed to provide him with accommodation adequate to his illness, notwithstanding that such obligation is established by the relevant provincial legislation and that the authorities have committed themselves to finding a solution to his housing problem.

The Court has examined this complaint of the applicant under Article 8 of the Convention, according to which:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The applicant complains that, given that the authorities refuse to find a satisfactory solution to his housing problem, he is forced to remain in hospital although the latter lacks facilities adequate to his illness; he thus considers his stay in hospital to be wholly unnecessary and to amount to a "deprivation of liberty for lack of alternatives".

The applicant claims that the best solution would be that he be allowed to return to the second apartment, which is more adequate to his medical condition than the third one. He underlines in this respect that the second apartment has been sealed since he vacated it and has not been allocated to anyone else to date. He points out that the third apartment, which is allegedly still under construction, does not meet the requirements listed by the Commission for the study of metabolic diseases: for example, it is centrally heated, and the maximum temperature allowed by the applicable rules is 21 ºC, which is insufficient; it is located on the ground floor just above the garages, so that it is not duly insulated, and it is in the countryside and in a small village, where numerous architectural obstructions still exist. He therefore considers that his refusal to accept it is perfectly justified.

The Government underline in the first place that the applicant has never availed himself of the possibility: of requesting the allocation of his first apartment after the completion of the renovation works; of appealing against the withdrawal of the allocation of the second apartment; of requesting the suspension of his eviction, and this despite the advice given to him by the local authorities themselves. They also underline that the applicant's forcible eviction was caused by his failure to pay the rent and to co-operate with the local authorities and that all

decisions concerning his second apartment were taken in accordance with the applicable legislation.

The Government further point out that the local authorities did all that it was in their power in order to find a solution to the applicant's housing problem; recently, a solution has been found, which is deemed to be satisfactory in the light of the opinion of the Commission for the study of metabolic diseases that the apartment in question is suitable for the applicant. The Government consider therefore that no breach of Article 8 of the Convention can be found in the present case.

The Court must first examine whether the applicant's rights under Article 8 were violated on account of the decision of the authorities to evict him despite his medical condition. It further has to examine whether the applicant's rights were violated on account of the authorities' alleged failure to provide him with adequate accommodation. The Court considers that, although Article 8 does not guarantee the right to have one's housing problem solved by the authorities, a refusal of the authorities to provide assistance in this respect to an individual suffering from a severe disease might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such refusal on the private life of the individual. The Court recalls in this respect that, while the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, this provision does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private life. A State has obligations of this type where there is a direct and immediate link between the measures sought by an applicant and the latter's private life (Eur. Court HR, Botta v. Italy judgment of 24 February 1998, *Reports of Judgments and Decisions* 1998-I, p.422, §§ 33-34).

The Court notes in the first place that the Government raise an objection as to the exhaustion of domestic remedies within the meaning of Article 35 of the Convention, the applicant having failed to react to the steps taken by the authorities with a view to evicting him, including to request that the eviction order be stayed. However, the Court considers that it is not necessary to examine this issue, as the application must at any rate be rejected for the following reasons.

The Court finds that the applicant's eviction from his apartment interfered with his rights under Article 8 § 1. The Court therefore has to examine whether the interference was justified under the terms of paragraph 2 of Article 8.

The Court notes that it is undisputed that the eviction was based on the applicable legislation. The interference at issue was, therefore, in accordance with the law within the meaning of Article 8 § 2. To the extent that ITEA aimed at recovering possession of the apartment on the ground that the applicant had ceased to pay the rent, the Court considers that the impugned decision had a legitimate purpose under paragraph 2 of Article 8, namely the protection of the rights of others.

As regards the question whether the interference complained of was "necessary in a democratic society", the Court underlines that the applicant's medical condition is particularly relevant to the need of an accommodation: the applicant had to be hospitalised as a consequence of his living in a camper van after his eviction. However, the Court is of the opinion that considerable weight must be given to the circumstance that the local authorities

tried to avoid the applicant's eviction for a long period between 30 April 1993, when they instructed a lawyer to commence eviction proceedings, and 28 January 1998, date of the eviction. The applicant was never co-operative and did not use the venues which were available to him and which were even pointed out to him in order to avoid the eviction. In these circumstances, the Court does not find any appearance of a breach of Article 8 on account of the authorities' decision to proceed with the applicant's eviction from the second apartment.

As regards the alleged failure to provide the applicant with adequate accommodation, the Court observes that, in order to find a solution to the applicant's housing problem, the Province of Trento has set up a specific Commission for the study of metabolic diseases, has requested this Commission to find an adequate apartment for the applicant, has allocated it to the applicant and is willing to carry out the further works indicated by the Commission for the study of metabolic diseases.

It is true that the applicant refuses to accept this apartment on the ground that it is not suitable and alleges that his previous apartment would be more suitable.

However, it is not for the Court to review the decisions taken by the local authorities based on the assessment made by the Commission for the study of metabolic diseases as to the adequacy of the third apartment. The Court considers that no positive obligation for the local authorities can be inferred from Article 8 to provide the applicant with a specific apartment. The Court notes that the local authorities are willing to carry out further works in the third apartment to make it adequate to his condition.

In these circumstances, the Court considers that the local authorities can be considered to have discharged their positive obligations in respect of the applicant's right to respect for his private life.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4.

2. As concerns the applicant's complaints relating to his alleged ill-treatment and to his detention, the Court is not required to decide whether or not they disclose an appearance of a violation of the Convention. The Court recalls that, according to Article 35 of the Convention, the Court may only deal with the matter within a period of six months from the date on which the final decision was taken. It observes that the alleged ill-treatment dates back to 1988-1989 and that the applicant was released on 14 August 1995, which is more than six months before the introduction of this application before the Court on 26 May 1997.

It follows that this part of the application was introduced out of time and must be rejected under Article 35 § 4 of the Convention.

For these reasons, unanimously, the Court

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Christos Rozakis
President