AS TO THE ADMISSIBILITY OF

Application No. 20251/92
by Giacomo PANTANO
against Italy

The European Commission of Human Rights (First Chamber) sitting in private on 5 March 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 31 January 1992 by Giacomo PANTANO against Italy and registered on 3 July 1992 under file No. 20251/92 ;

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

Having considered that the Government have not submitted any observations ;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a U.S. citizen, born in 1960 and residing in New York. Before the Commission he is represented by Mr. Ernesto Fiorillo, a lawyer practising in Messina.

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

The applicant owns a piece of land in Villaggio Zafferia di Messina, in Sicily.

In 1970 the Messina town council adopted a land-use plan (Piano di Zona "Santa Lucia"), according to which the applicant's land was to be destined either to the building of council houses or to public green space. Both destinations implied prohibition on construction.

In 1978 the new town-planning scheme (Piano Regolatore) for Messina was adopted; it contained the same restriction on the use of land.

The relevant legislation (Art. 1 of Regional Law no. 38/73)

provided for a ten years' time-limit, within which the subsequent detailed plans (Piani particolareggiati) or the plans of division of the plot (Piani di lottizzazione) had to be adopted, failing which the validity of the town-planning scheme itself would lapse. According to the same legislation, the effect of restrictions on the use of land could not in any event be extended beyond the same time-limit.

The town council did not take any further action until 1989.

Meanwhile, on 28 August 1986 the Administrative Court of Appeal of Sicily (Consiglio di Giustizia Amministrativa per la Regione Siciliana), following the appeal lodged by some of the applicant's neighbours, annulled the "Santa Lucia" plan. In particular, the Court of Appeal recalled that since a land-use plan amounts to secondary legislation, such a plan must relate to land covered by primary town-planning legislation ("strumento urbanistico primario"), which consists of town-planning schemes and building plans. The Court then found that the "Santa Lucia" land-use plan could not be considered as covered by the Messina town-planning scheme which was in force at the time of its adoption ("Piano Borzi'"); the "Santa Lucia" plan, in fact, related to an area which was situated about fifteen kilometres away from the area subject to the town-planning scheme.

The Court concluded that the "Santa Lucia" land-use plan was null and void; it followed that the restriction on the use of land, thereby imposed, was also null and void.

Despite the expiry of the ten years' time-limit for the 1978 town-planning scheme, and the above judgment as regards the "Santa Lucia" land-use plan, in 1989 the town council of Messina started the necessary steps to build the council houses. In particular, on 9 June 1989 the town council approved a change ("variante") in the 1970 plan; on the same day it selected the construction companies for the building of the council houses; on 27 december 1990 a further change in the land-use plan was approved; on 30 April 1991, following the second change in the land-use plan, the selection of the construction companies was amended.

In 1991, the applicant applied to the Sicilian Regional Administrative Court, asking that all said decisions be quashed. The relevant proceedings are still pending.

In the same year, the applicant received an offer from a private construction company for his plot of land, provided that all the decisions taken by the town council with a view to enforcing the land-use plan were revoked.

For this purpose, in November 1991 the applicant served a notice on the town council, asking it either to revoke all the decisions taken since 1989 with a view to enforcing the restriction imposed on the area, or to appear before a Public Notary in order to buy his plot of land at the market price.

The town council neither replied to the notice, nor appeared before the Public Notary for the sale within the twenty five days' time limit laid down therein; the construction company withdrew its offer.

On 19 May and 12 June 1992 the town council concluded contracts as to the building of the council houses on the applicant's plot of land with several building societies.

On 13 August 1992, the town council decided to commence the relevant expropriation proceedings.

By decision of 26 March 1993, served on the applicant on 19 April 1993, the Messina mayor authorised the urgent occupation ("occupazione d'urgenza") with a view to expropriating the applicant's

plot, which was eventually occupied on 17 May 1993.

On 19 May 1993, the applicant summoned the Messina town council before the Sicilian Regional Administrative Court, in order to oppose the occupation and future expropriation of his land on the ground of the nullity of the restriction on the use of land. He asked for the immediate suspension, and the declaration of nullity of the decisions of 26 March 1993 and of 13 August 1993, as well as of the four decisions already opposed before the same court in 1991.

By interim measure of 6 July 1993, the administrative court suspended the effect of all said decisions; proceedings on the merits are still pending.

Nevertheless, the town council did not vacate the applicant's plot of land and authorised the commencement of the building of the council houses.

The construction companies charged with the works are currently building council houses on the applicant's plot of land.

COMPLAINTS

1. The applicant complains that his property has been subject to a prohibition on construction since 1970; he claims that this restriction on the use of land is unlawful, since it derives from a land-use plan which has been declared null and void and from a town planning scheme whose validity expired in 1988, but that it has nevertheless been maintained by the town council.

In particular, despite the 1986 judgment annulling the land-use plan, the town council has tried to enforce it and, after occupying the applicant's plot of land, has commenced the relevant expropriation proceedings. The applicant has applied to the administrative regional court in order to oppose the expropriation and any consequential act or decision, and has been successful in the first stage, as the court has suspended the effects of all the decisions opposed. Nevertheless, while the proceedings on the merits are still pending, the town council has refused to vacate the plot of land, on which, on the contrary, the building works have meanwhile been initiated.

The applicant alleges that the duration of this unlawful restriction on the use of his land constitutes a breach of his right to the peaceful enjoyment of his possessions, guaranteed by Article 1 of Protocol No. 1. In particular, he alleges that the value of his plot of land has decreased from development value to mere site value.

2. He also invokes Article 13 of the Convention in conjunction with Article 1 of Protocol 1, and contends that he has no remedy whereby he can force the town council to comply with the rulings of the Administrative Court of Appeal.

3. The applicant further argues that he is denied access to a court, contrary to Article 6 para. 1, in that he cannot apply to the civil courts to obtain compensation for the financial prejudice he is suffering, because under Italian law landowners do not have a subjective right ("diritto soggettivo") to compensation (which would entitle them to institute civil proceedings), but a mere legitimate interest ("interesse legittimo") vis-à-vis the powers of administrative authorities in the area of land use regulation, which only allows them to apply to the administrative courts.

4. The applicant finally alleges a violation of Articles 14, 17 and 18 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 31 January 1992 and registered on 3 July 1992.

On 17 May 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 were invited to submit their observations on the admissibility and merits before 8 September 1995. At the Government's request dated 8 September 1995, the time limit was extended until 9 October 1995. No further extension of the time limit was requested.

By letter of 18 October 1995 the Government were informed that the application was being considered for inclusion in the list of cases for examination by the Commission at its session of January 1996.

THE LAW

1. The applicant alleges that his plot of land has been subject to an unlawful building ban since 1970; he argues that the duration of this restriction on the use of his land constitutes a breach of his right to the peaceful enjoyment of his possessions, guaranteed by Article 1 of Protocol 1 (P1-1).

The applicant further contends that there is no effective remedy whereby he can force the Messina town council to acknowledge the nullity of the 1970 land-use plan and therefore to cease the building of council houses on his plot of land. He invokes Article 13 in conjunction with Article 1 of Protocol No. 1 (P1-1) in this respect.

Article 1 of Protocol No. 1 (P1-1), in so far as relevant, provides as follows:

> "Every natural (...) person is entitled to the peaceful enjoyment of his possessions. (...)
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such law 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."

Article 13 (Art. 13) of the Convention provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

The Commission recalls that the above complaints were communicated to the Italian Government, who were invited to submit their observations on the admissibility and merits by 8 September 1995. The time limit for the submission of such observations was extended, at the Government's request, until 9 October 1995. The Government, who have been informed that the application was considered for inclusion in the agenda of the Commission of the January session, did not request an extension of this time limit, and did not submit any observations.

The Commission recalls the Convention organs' case-law, according to which the parties must be invited to participate in the examination of the facts by the Commission, though such an examination cannot be hindered by the manner in which the parties in fact participate (see No. 8007/77, Dec. 10.7.78, D.R. 13, p. 85).

As regards in particular the part of the applicant's complaint under Article 1 of Protocol No. 1 (P1-1) concerning the occupation of his property on 17 May 1993, the Commission further recalls that it is its normal practice, where an application has been communicated to

the respondent Government, in part or as a whole, not to declare the complaint concerned inadmissible for failure to exhaust domestic remedies, unless this matter has been raised by the Government in their observations. The Commission considers that the same principle should be applied where, as in the present case, the respondent Government have not submitted any observations at all (see No. 24541/94, Dec. 26.2.96, unpublished).

It follows that this part of the application cannot be rejected under Article 26 (Art. 26) of the Convention for non-exhaustion of domestic remedies.

Having examined these complaints, the Commission considers that they raise serious issues of fact and law which are of such complexity that their determination should depend on an examination of the merits. These complaints cannot therefore be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring them inadmissible has been established.

2. The applicant further argues that he is denied access to a court, in that he cannot apply to the civil courts to obtain compensation for the financial prejudice he is suffering, because under Italian law landowners do not have a subjective right ("diritto soggettivo") to compensation (which would entitle them to institute civil proceedings), but a mere legitimate interest ("interesse legittimo") vis-à-vis the powers of administrative authorities in the area of land use regulation, which only allows them to apply to the administrative courts.

He invokes Article 6 para. 1 (Art. 6-1), which, in so far as relevant, reads:

> "In the determination of his civil rights and obligations (...), everyone is entitled to a fair and public hearing (...)."

The Commission recalls that everyone has the right to have any claim relating to his civil rights or obligations brought before a court (see Eur. Court H.R., Golder judgment of 21 February 1975, Series A no. 18, p. 18, para. 36).

The Commission further recalls that according to the Italian case-law, where following an administrative decision concerning specific property the owner retains the ownership subject to restrictions which reduce to virtually nothing the economic value of the use or exchange of the property, this is known as "value expropriation" ("espropriazione di valore") and it gives rise to an entitlement to compensation, the amount of which it is for the ordinary courts to fix (cf. Eur. Court H.R., Katte Klitsche de la Grange judgment of 27 October 1994, Series A no. 293-B, p. 31, paras. 26-27).

However, the Commission notes that the applicant did not institute civil proceedings in order to seek compensation for the alleged financial losses, which would have been possible under Italian law; the Commission therefore considers that the applicant can not claim not to have had access to a court.

It follows that this part of the application is manifestly ill-founded and must therefore be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

3. Finally, the Commission has examined the applicant's complaints under Articles 14, 17 and 18 (Art. 14, 17, 18) of the Convention.

However, it considers that, in so far as they have been substantiated, these complaints do not disclose any appearance of a violation of the Convention.

It follows that they are manifestly ill-founded and must be rejected pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaints related to the restriction on the use of his land and the absence of an effective remedy therefor;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)