CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 63635/00
by Dora POLLANO
against Italy

The European Court of Human Rights (First Section), sitting on 18 March 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,

and Mr S. QUESADA, *Deputy Section Registrar*,

Having regard to the above application lodged on 15 November 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Dora Pollano, is an Italian national who was born in 1934 and lives in San Giuseppe Vesuviano (Naples). She was represented before the Court by Mrs R. Filosa and Mr G. Sannino, lawyers practising in Naples.

The respondent Government were represented by their successive Agents, respectively Mr U. Leanza and Mr I.M. Braguglia, and by their successive co-Agents, respectively Mr V. Esposito and Mr F. Crisafulli.

A. The circumstances of the case

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

The applicant is the owner of a flat in Naples, which she had let to F.M.

In a writ served on the tenant on 16 November 1991, she communicated her intention to terminate the lease on expiry of the term on 30 June 1992 and summoned him to appear before the Naples Magistrate.

At the hearing of 4 December 1991, F.M. opposed alleging that the lease expired on 31 December 1995. The Magistrate declared its incompetence because of the value of the object of the proceedings and referred the parties to the Naples Tribunal.

On 23 January 1992 the action was resumed.

By a decision of 23 March 1994, the Naples Tribunal decided to extend the lease to 31 December 1997 pursuant to Law 359/1992, and ordered that the premises be vacated by 31 January 1998.

On 11 March 1998, a notice was served on the tenant requiring him to vacate the premises.

On 2 May 1998, the tenant was informed that the order for possession would be enforced by a bailiff on 13 May 1998.

On 13 May 1998, the bailiff made an attempt to recover possession, but it proved unsuccessful.

Pursuant to article 6 of Law 431/98, on 8 November 1999, the Naples Tribunal suspended the eviction proceedings until 2 January 2000.

On 9 December 1999, a second notice was served on the tenant informing him that the order for possession would be enforced by a bailiff on 15 January 2000.

Between 15 January 2000 and 4 April 2000, the bailiff made four attempts to recover possession, which proved unsuccessful, as the applicant was never granted the assistance of the police enforcing the order for possession.

On 26 May 2000, the applicant recovered possession of the flat.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention about the length of the proceedings.

2. The applicant further complains under Article 1 of Protocol No. 1 to the Convention about her prolonged inability - through lack of police assistance - to recover possession of her flat.

THE LAW

1. The applicant claims that she had been a victim of a violation of Article 6 § 1 of the Convention, which provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The Government submit that the length at issue was not unreasonable, the Naples Tribunal having ordered that the premises be vacated by 31 January 1998 and the applicant having recovered possession of the flat on 26 May 2000. In any event, the Government object that the applicant did not exhaust the domestic remedies following the entry into force of Law nº 89 of 24 March 2001 ("the Pinto Act").

The applicant considers that the period of time to be taken into consideration by the Court began either on 16 November 1991 (when she summoned the tenant to appear before the Naples Tribunal) or on 31 December 1995 (when the lease expired) and ended on 26 May 2000. She maintains that she lodged the application with the Court before the entry into force of the "Pinto Act" which, in her opinion, represents a remedy that does not give any possibility to accelerate the course of the proceedings.

As far as the applicant complains of the length of the civil proceedings for the determination of her right to recover possession of the flat, the Court notes that she summoned the tenant to appear for the first time before the Naples Tribunal on 16 November 1991 and that she recovered possession of the flat on 26 May 2000. Therefore, the proceedings at issue lasted eight years and six months.

The Court recalls, however, that under the Pinto Act, anyone who has sustained pecuniary or non-pecuniary damage can apply to the appropriate court of appeal for a declaration that there has been a violation of the European Convention on Human Rights in respect of the "reasonable time" requirement in Article 6 § 1 and claim a sum in just satisfaction.

The Court points out that in many earlier cases (see, among others, *Brusco v. Italy* (dec.), no. 69789/01, CEDH 2001-IX, and *Giacometti v. Italy* (dec.), no. 34969/97, CEDH 2001-XII), it has held that the remedy introduced by the Pinto Act is one that the applicant must make use of before the Court rules on the admissibility of the application, regardless of the date on which the latter was lodged.

The Court discerns no circumstances which call for a different decision in the instant case. It follows that this part of the application is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

Examining the complaint in connection with the more general right to a court (see, among others, *Immobiliare Saffi v. Italy* [GC], no. 22774/93,

§ 61, ECHR 1999-V), this part of the application is inadmissible for the following reasons.

The right to a court as guaranteed by Article 6 also protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party (see, *mutatis mutandis*, *Hornsby v. Greece* judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

Accordingly, the execution of a judicial decision cannot be unduly delayed. However, a stay of execution of a judicial decision for such a period as is strictly necessary to enable a satisfactory solution to be found to public-order problems may be justified in exceptional circumstances (see *Immobiliare Saffi,* cited above, § 69).

The Court observes that the applicant had to wait two years after the first attempt of the bailiff before being able to repossess the flat.

Having in mind the public order problems which Italy admittedly has had to face in the field of housing, the Court considers that this delay was not so long as to deprive the order for possession of all useful effect or of undermining its substance (see, *a contrario*, *Immobiliare Saffi,* cited above, § 73; see also, *mutatis mutandis*, *Caselli v. Italy* (dec.), no. 36679/97, 20.01.2000).

Finally, the Court considers, bearing in mind the practical difficulties raised by the enforcement of a very large number of evictions, that the length of the enforcement proceedings at issue was not unreasonably long (see*, a contrario*, *Scollo v. Italy,* cited above, § 44 *in fine*).

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

2. The applicant complains furthermore of her prolonged inability to recover possession of her flat, owing to the lack of police assistance. She alleges a violation of her right of property, as guaranteed by Article 1 of Protocol No. 1 to the Convention, which provides:

> "Every natural or 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 Court considers that the interference complained of amounted to control of the use of property within the meaning of the second paragraph of Article 1, and pursued a legitimate aim in the general interest, as required by that provision (see *Immobiliare Saffi,* cited above, §§ 46 and 48).

The Court recalls that an interference "must strike a "fair balance" between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, and therefore also in its second paragraph. There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question. In spheres such as housing, which plays a central role in the welfare and economic policies of modern societies, the Court will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation" (see *Immobiliare Saffi*, cited above § 49).

The Court considers that, in principle, the Italian system of staggering of the enforcement of court orders is not in itself open to criticism, having regard in particular to the margin of appreciation permitted under the second paragraph of Article 1. However, such a system carries with it the risk of imposing on landlords an excessive burden in terms of their ability to dispose of their property and must accordingly provide certain procedural safeguards so as to ensure that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable (see, *mutatis mutandis*, *Immobiliare Saffi,* cited above, § 54).

The Court must thus ascertain whether, in the instant case, a balance was maintained between the relevant interests (see *Scollo v. Italy* judgment of 28 September 1995, Series A n° 315-C, § 37).

The Court finds that the restriction on the applicant's use of her flat, which restriction lasted two years did not impose on her an individual and excessive burden, contrary to the requirements of the second paragraph of Article 1 of Protocol No. 1.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President