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. 64066/00
by Francesco ROSSANO
against Italy

The European Court of Human Rights (First Section), sitting on 6 May 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr G. BONELLO,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 5 December 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, Mr Francesco Rossano, is an Italian national who was born in 1953 and lives in S. Agnello (Naples). He was represented before the Court by Mr G. Carini, a lawyer 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.

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 he had let to M.M., G.T. and C.T.

In a writ served on the tenant on 28 June 1989, the applicant informed the tenants of his intention to terminate the lease on expiry of the term on 11 July 1991 and summoned them to appear before the Naples Magistrate.

By a decision of 11 July 1990, which was made enforceable on 30 January 1991, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 1 July 1992.

On 2 July 1992, the applicant served notice on the tenants requiring them to vacate the premises.

On 3 August 1992, he informed the tenants that the order for possession would be enforced by a bailiff on 9 September 1992.

Between 9 September 1992 and 6 March 2001, the bailiff made twenty-two attempts to recover possession. Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

On 2 July 1993, the applicant made a statutory declaration that he urgently required the premises as accommodation for himself.

Pursuant to Law Decree no. 32 of 25 February 2001, all the enforcement proceedings were suspended until 31 December 2001.

Pursuant to Law Decree no 122 of 20 June 2002, all the enforcement proceedings were suspended until 30 June 2003.

According to the last information provided by the applicant on 20 February 2004, he has not yet recovered possession of the flat due to Law n. 200 of 1 August 2003 which suspended all the enforcement proceedings until 30 June 2004.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention about the duration of the eviction proceedings and, initially, also about a denial of access to a court.

THE LAW

Article 6 § 1 of the Convention, on which the applicant relied, read as follows:

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

When inviting the respondent Government to submit written observations on the admissibility and merits of the case, pursuant to Rule 52 § 2 of the Rules of the Court, the Court further requested the Government to comment whether the facts of the case disclosed a violation of Article 1 of Protocol No. 1 to the Convention, which secures the peaceful enjoyment of possessions.

In their observations, which the Registry received on 30 October 2002, the Government argued that the applicant had not exhausted domestic remedies. They maintained that since the Court of Cassation's judgment of 18 June 2002, which was lodged with the registry of that court on 26 July 2002, it was clear that a remedy under the Pinto Act was also available in respect of eviction proceedings, with the result that anyone considering himself a victim of a violation of Article 6 § 1 on account of the inordinate length of such proceedings could seek compensation from the relevant court of appeal. That applied to any complaint under Article 6 § 1.

In his observations on the admissibility of the application in response to those of the Government, the applicant stressed that he intended to complain only under Article 6 § 1 of the Convention of the unreasonable length of the eviction proceedings and that the object of the present application only consisted in his right to a just satisfaction as a consequence of the alleged violation of the reasonable time requirement.

The applicant contended furthermore that the remedy referred to by the Government was optional rather than compulsory since the term used in section 6 of the Act was "entitled" and not "must". The applicant relied on the *tempus regit actum* principle to dispute the retroactive application of the Act.

The Court takes note of the applicant's express wish to limit the application to the complaint concerning the length of the proceedings. In these circumstances the Court will limit its examination of the application accordingly.

The Court recalls that under Law no. 89 of 24 March 2001 ("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 finds, furthermore, that the applicant is

still in a position to make use of the remedy available to him under Italian law (see, *a contrario*, *Mascolo v. Italy* (dec.), no. 68792/01, 16.10.03).

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 application was lodged.

The Court discerns no circumstances which call for a different decision in the instant case.

It follows that the complaint 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.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President