CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 36681/97
by Vito Sante SANTORO
against Italy

The European Court of Human Rights (Third Section), sitting on 16 January 2003 as a Chamber composed of

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 22 May 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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 is an Italian national, born in 1957 and living in Ostuni (Brindisi). He is represented before the Court by Mr Negro, a lawyer practising in Brindisi. The respondent Government were represented by Mr F. Crisafulli, co-agent.

A. The circumstances of the case

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

1. The special supervision by the police

In an order on 24 March 1994, filed with the registry on 30 March 1994, the Brindisi District Court imposed preventive measures on the applicant, who was placed under special police supervision for one year.

The Brindisi District Court found that numerous criminal complaints had been made out against the applicant. In particular the Court found that in 1991 and 1992, criminal complaints for receiving stolen goods were repeatedly filed against him in the ambit of his business of car demolition and the sale of car spare parts. On 13 May 1992, the preventive measure of a warning ("*avviso sociale"*) was imposed on the applicant for one year. On 13 June 1992, a criminal complaint was filed against him for aiding and abetting; he was later acquitted by a judgment of 2 July 1993. On 5 May 1993, the applicant was arrested together with two other persons in conjunction with another complaint for receiving stolen goods which had been filed against him. In the light of the foregoing, the Court considered that it was reasonable to believe that, in spite of his clean record, the applicant was an habitual offender and thus "socially dangerous" pursuant to Section 1 of Law n° 1423/56. The District Court, however, refused to impose compulsory residence on him ("*obbligo di soggiorno*").

The order was forwarded for enforcement to the Brindisi Prefect on 7 April 1994 and was notified to the applicant on 3 May 1994.

The applicant appealed, but his appeal was dismissed by the Lecce Court of Appeal on 29 July 1994. The order became final on 24 September 1994 and was subsequently notified to the Ostuni Municipality on 27 September 1994.

On 25 July 1995 the Ostuni police drafted, in the applicant's presence, the document stating the obligations imposed on the applicant ("*verbale di sottoposizione agli obblighi"*).

The applicant was required:

- to look for a suitable job within two months from the notification of the order;
- not to change his place of residence;

- not to leave his home without informing the authorities responsible for supervising him;
- to live an honest life and not to arouse suspicion;
- not to associate with persons who had a criminal record or who were subject to preventive or security measures;
- not to return home later than 8 p.m. in summer or 6 p.m. in winter or to leave home before 7 a.m., unless due cause could be shown and in all cases only after informing the authority responsible for supervising him;
- not to keep or carry weapons;
- not to go to bars or attend public meetings;
- to report to the relevant police station on Sundays between 9 a.m. and 12 noon;
- to have on him at all times the card setting out his precise obligations under the preventive measures and a copy of the court order.

On 31 July 1995 the applicant applied to the Brindisi District Court seeking a declaration that the preventive measure had expired on 2 May 1995, i.e. one year after the date on which the order of 24 March 1994 was served on him.

In an order of 7 October 1995, the Brindisi District Court considered that, even if pursuant to Section 11 Law No. 1423 of 27 December 1956 the special supervision period starts to run on the day on which its addressee is notified with the relevant order, the execution of such a formality is necessary but not sufficient to start the execution of the said measure. It is also necessary that, according to Section 7 of Law No. 1423 of 27 December 1956, the relevant order is forwarded for enforcement to the competent police authority. The court recalled that, according to the Court of Cassation's case-law, special supervision does not cease to apply with the passage of the time for which it was imposed, independently of its execution. In this case, the execution of the said measure started on 25 July 1995, the day on which the Ostuni police drafted the document stating the obligations imposed on the applicant. Consequently, according the court, stated that the preventive measure had not ceased to apply.

The applicant appealed before the Lecce Court of Appeal. He maintained that the preventive measure had automatically ceased to apply on 2 May 1995 or, at the latest, on 28 September 1995, which was the notification to the Brindisi police and Ostuni Municipality. At any rate, the applicant sought an order rescinding the measure, arguing that there were no grounds for maintaining it.

In a decree of 29 April 1996, the Court of Appeal upheld the decree of 7 October 1995, observing that the present case fell outside the cases of automatic cancellation of the special supervision provided for by law. It considered that the preventive measure could not automatically cease to apply on the day indicated in the order -24 March 1994- independently of its

execution. Consequently, the court concluded that the *dies a quo* for the application of the preventive measure was the day on which it began to be executed. In the applicant's case this happened on 25 July 1995, when the competent police station had drafted the document stating the obligations imposed on the applicant.

The applicant appealed on points of law before the Court of Cassation.

By a judgment of 16 December 1996, which was filed with the registry on 6 February 1997, the Court of Cassation ruled that the applicant's special supervision had ceased to apply on 2 May 1995. The court ruled that Section 11 of Law n° 1423/56 explicitly and solely provides that the special supervision starts to run on the day when its addressee is notified with the relevant order. Consequently, contrary to the opinion of the Court of Appeal, it found that the date on which the document stating the obligations imposed on the applicant was drafted was not relevant for identifying the *dies a quo* for the application of the preventive measure. The court concluded that the period of special supervision started to run from the day on which the relevant order was served on the applicant.

In the meanwhile, on 20 September 1996 the Ostuni police had informed the Brindisi District Court that the applicant's special supervision had ceased to apply on 24 July 1996.

2. The disenfranchisement

As a result of the special supervision measure imposed on the applicant, the Ostuni Municipal Electoral Committee decided on 10 January 1995 to strike the applicant off the electoral register on the ground that his civil rights had been suspended pursuant to Presidential Decree No. 223 of 20 March 1967.

The applicant was subsequently prevented from taking part in the elections for the Regional and Provincial Councils ("*Consiglio Regionale e Consiglio Procinciale*") and the President of the Province ("*Presidente della Provincia*") of 23 April 1995 and in the referendum of 11 June 1995.

On 28 July 1995, the applicant was reinstated in the electoral registers.

In a certificate issued on 22 November 1995, however, the Ostuni Mayor stated that the applicant had been subjected to a further year of special supervision by a decision of the Brindisi police of 25 July 1995. On 15 December 1995 the mayor declared that the applicant would be struck off the electoral registers for another year.

On 12 April 1996 the Ostuni Electoral Committee refused the applicant's request to be allowed to take part in the elections for the national Parliament of 21 April 1996.

The applicant lodged an appeal with the Lecce Court of Appeal in which he contended that the preventive measures had ceased to apply on 2 May 1995, and that accordingly there were no grounds for excluding him from the elections.

By a judgment of 18 April 1996, the Lecce Court of Appeal rejected the appeal, on the ground that the disenfranchisement could be lifted only after the actual application of the preventive measure.

B. Relevant domestic law

1. Provisions concerning preventive measures in individual cases

The power to impose preventive measures was introduced by Law No. 1423 of 27 December 1956. Such measures are intended to prevent individuals regarded as a "danger to society" from committing offences. The statute currently classifies three groups as being a danger to society: (a) anyone who, on the basis of factual evidence, must be regarded as an habitual offender; (b) anyone who on account of his conduct or life-style must be regarded, on the basis of factual evidence, as habitually deriving his income from the proceeds of crime; and (c) anyone who on account of his conduct must be regarded, on the basis of factual evidence, as having committed offences endangering the mental or physical integrity of minors or posing a threat to society, security or public order.

Section 3 of Law No. 1423/56 provides that persons who are a danger to society may be placed under special police supervision. That measure may be accompanied, if need be, by a requirement not to stay in one or more towns or provinces or, if the person concerned is considered to be particularly dangerous, by a compulsory residence order requiring him to live in a particular municipality ("*obbligo di soggiorno"*).

Jurisdiction to make such orders is vested exclusively in the court sitting in the provincial capital. The court sits in camera and must give a reasoned decision after hearing the representative of the public prosecutor's office and the person on whom it is proposed to impose the measure, who has the right to lodge memorials and to be represented by a lawyer. Both parties may appeal within ten days. Lodging an appeal has no suspensive effect. A further appeal lies from the court of appeal to the Court of Cassation.

When imposing a preventive measure, the court must fix its duration, between one and five years, and specify the conditions with which the person concerned must comply.

Pursuant to paragraph 1 of Section 11 of Law n° 1423/56, the special supervision period starts to run on the day on which its addressee is notified of the relevant order and automatically ends when the period of time fixed in the order has elapsed.

2. Provisions on disenfranchisement

Article 2 of Presidential Decree No. 223 of 20 March 1967 provides that, *inter alia*, persons on whom preventive measures have been imposed by a court order or an administrative decision shall be disenfranchised.

Article 32 § 1 (3) of that decree provides that in such cases the prefect ("*questore"*) empowered to enforce such measures shall notify the municipality where the person concerned resides of any decision entailing the loss of civic rights. The municipal electoral committee shall then remove the name of the person concerned from the electoral register, even outside one of the usual periods for updating the lists.

3. Article 117 of the Constitution

Article 117 of the Constitution confers legislative power to the Regions within the limits of the fundamental principles established by the State's laws. It sets out the competence of the Regions, *inter alia*, in matters of regional administrative planning, local policy, public health care, education, local museums and libraries, town planning, tourism, traffic regulations, navigation, quarries and turf pits, game, agriculture, forests and handicraft. Article 117 also states that the Regions have legislative power in other matters established by constitutional laws.

COMPLAINTS

1. The applicant complains, under Articles 5 and 8 of the Convention and under Article 2 of Protocol No. 4, that he was illegally kept under special supervision of the police after the expiry of the order of 24 March 1994.

2. The applicant complains under Article 3 of Protocol No. 1 that he was disenfranchised for a longer period than that which was lawful and that he could not vote in the elections of the Regional and Provincial Councils and of the President of the Province on 23 April 1995, in the referendum of 11 June 1995 and in the parliamentary elections of 21 April 1996.

THE LAW

1. The applicant complains that he was illegally kept under special supervision of the police after the expiry of the order of 24 March 1994 and that no compensation was available to him for the undue prolongation of

the preventive measure. He invokes Articles 5 and 8 of the Convention and 2 of Protocol No. 4.

The Court first observes that Article 8 of the Convention does not seem to be applicable to the facts complained of. It moreover recalls that restrictions on the liberty of movement resulting from special supervision do not amount as such to a deprivation of liberty within the meaning of Article 5 § 1 of the Convention and fall to be dealt with under Article 2 of Protocol No. 4 (see Guzzardi v. Italy judgment of 6 November 1980, Series A no. 39, p. 33, § 92, and Raimondo v. Italy judgment of 22 February 1994, Series A No. 281-A, p. 19, § 39). The Court will therefore examine the complaint under this latter provision, which reads as follows:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. (...)"

The applicant observes that in the Italian legal system the judge is called on to apply the law and not to create it, the principle of strict legality in criminal law preventing him from overstepping the bounds resulting from the wording of the provisions of criminal law. Therefore, the determination of the *dies a quo* of the special supervision cannot depend on the discretion of the Prefect ("*questore*") or of the police forces. The applicant further contests the existence, in the Italian system, of the case-law supposedly followed by the Lecce Court of Appeal. He notes that there is only one judgment, in which the Court of Cassation stated that a preventive measure does not cease to apply when the period for which it was made is over; however, this decision concerned a case where the measure had not been executed, integrally or in part, because of interruptions such as military service or expatriation. The judgement of the Court of Cassation quashing the decision of the Lecce Court of Appeal, therefore, is not the result of any change in the case-law, being on the contrary a further statement of the exact interpretation of paragraph 1 of Section 11 of Law n° 1423/56.

The Government consider that the restrictions imposed on the applicant were in accordance with the law, the decision of the Lecce Court of Appeal being the result of an interpretation of the relevant domestic law in conformity with the case-law previously followed by the Court of Cassation. The Government also submits that it is the domestic courts' role to resolve problems of interpretation of domestic legislation. In the present case the error made by the competent authorities was of a formal nature and

did not entail any violation of the rights of the applicant. The latter could therefore not be considered as a victim under the Convention.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complains that he was disenfranchised for a longer period than that which was lawful and that as a result he was prevented from voting in the elections of the Regional and Provincial Councils and of the President of the Province of 23 April 1995, in the referendum of 11 June 1995 and in the parliamentary elections of 21 April 1996. He invokes Article 3 of Protocol No. 1 which reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

The applicant submits that the disenfranchisement after 2 May 1995 was unlawful as it was ordered on the basis of the unlawful imposition after that date of the special police supervision.

In the Government's opinion the disenfranchisement was lawful insofar as it must be considered the consequence of the lawful imposition of the special supervision measure.

a) As to the provincial elections and the referendum

The Court recalls that Article 3 of Protocol No. 1 guarantees the "choice of the legislature".

It is true that the word "legislature" does not necessarily mean the national parliament: it has to be interpreted in the light of the constitutional structure of the State in question. The power to make regulations and by-laws which is conferred on the local authorities in many countries is to be distinguished from legislative power, which is referred to in Article 3 of Protocol No. 1, even though legislative power may not be restricted to the national parliament alone (see *Cherepkov v. Russia* (dec.), no. 51501/99, EHCR 2000-I).

The Court observes that the Italian Provinces have the power to adopt regulations concerning local matters within the limits of the principles established by the law enacted by the State. The Constitution does not confer to the provincial authorities any legislative power within the meaning of Article 3 of Protocol No. 1. Moreover, the obligations imposed on the Contracting States by Article 3 of Protocol No. 1 do not apply to referendums (see *Borghi v. Italy* (dec.), no. 54767/00, 20 June 2002).

Therefore, as to the complaints about the elections of the Provincial Council and of the President of the Province of Brindisi of 23 April 1995, and as to the referendum of 11 June 1995, the Court concludes that Article 3 of Protocol No. 1 to the Convention is not applicable in the present case.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4.

b) As to the regional and the parliamentary elections

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, including the question whether Article 3 of Protocol No. 1 could be applied to regional elections, the determination of which requires an examination of the merits. The Court concludes therefore that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning the limitation of his freedom of movement and of his right to vote in the regional elections of 23 April 1995 and in parliamentary elections of 21 April 1996;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President