

(TRANSLATION)

THE FACTS

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

The applicant is an Italian national born on ** 1952 at Cagliari (Italy). He resides in Rome and has a legal practice in Naples.

Since 29 December 1978 the applicant has been the owner of a flat in Naples which he let to its present tenant.

Following his marriage on 5 October 1980, the applicant, who had rented another flat, took proceedings against his tenant to have the lease terminated and secure the use of his flat. In particular, he submitted that he needed to have the use of his flat in order to live there.

His application was dismissed by the court of first instance in a decision of 19 April 1982. The decision was set aside on 6 April 1983 by decision of the Naples court, which granted him the termination of the lease and gave the tenant notice to quit by 13 April 1984.

This decision became final, but before it could be enforced, emergency legislative measures were taken for the areas affected by the 1980 and 1984 earthquakes, including Naples.

For instance, Act No. 637 of 10 November 1983 suspended the execution of eviction orders until 30 June 1984.

Meanwhile, the tenant appealed to the enforcing court which, by order of 30 March 1984, set the eviction date at 13 November 1984.

The eviction was again postponed in accordance with Act No. 363 of 24 July 1984 suspending eviction orders until 31 December 1984.

Under Legislative Decree No. 793 of 29 November 1984, the time-limits for the execution of eviction orders were again extended to 30 June 1985.

The same date was stipulated in Legislative Decree No. 12 of 7 February 1985 and Act No. 118 of 5 April 1985.

The Legislative Decree of 27 June 1985 stipulated a further suspension of eviction orders until 31 December 1985.

The applicant was obliged to leave Naples because the flat which he was renting was by then too small for himself, his wife and their two children, and he had not yet found other suitable accommodation in Naples at a price he could afford.

COMPLAINTS

The applicant complains that the aforementioned provisions suspending the execution of eviction orders prevent him from using his flat, and thus render his right of ownership meaningless.

He alleges a violation of Article 1 of Protocol No. 1.

THE LAW

The applicant complains that the provisions on suspension of the execution of eviction orders, in so far as they have had the effect of preventing him from occupying his flat since 13 November 1984, constitute an infringement of his right of ownership, and relies on Article 1 of Protocol No. 1 which secures to every natural or legal person "the peaceful enjoyment of his possessions".

1. *Observance of the conditions set forth in Article 26 of the Convention*

The Commission finds that the application does not raise any issue under Article 26 of the Convention.

The alleged violation derives from national laws against which, in the present case, there is apparently no means of appeal under Italian law. Moreover, these successive laws have continued to operate since the date on which the present application was submitted to the Commission, which means that the six months' period referred to in Article 26 of the Convention does not run.

2. *Application of Article 1 of Protocol No. 1*

The Commission finds that the application of the statutory provisions relating to the suspension of the execution of eviction orders does not in itself entail loss of ownership of the property in question, namely rented flats.

It nevertheless points out that restrictions on the exercise of the right of property may constitute interference falling within the ambit of Article 1 of Protocol No. 1 (cf. Eur. Court H.R., Sporrong and Lönnroth judgment of 23 September 1982, Series A no. 52, para. 60).

It notes in this connection that the building owned by the applicant was for residential use and that the applicant substantiated his need to take up residence there with his family before the Italian courts.

The Commission therefore finds that the suspension of the execution of eviction orders, in depriving the applicant of the unrestricted use of his possessions, substantially affected his right of ownership and constituted interference which must be examined in the light of the second paragraph of Article 1 of Protocol No. 1 (cf., *mutatis mutandis*, No. 9063/84, Gillow v. United Kingdom, Comm. Report 3.10.84, para. 144 ff). The aforementioned provision secures "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...".

The Commission is thus required to consider two questions: whether the legislation at issue pursues a legitimate aim "in the general interest", and whether the operation of the legislation and the control thereby exercised over individuals' use of their property is proportionate to the legitimate aim pursued (cf. No. 9063/84, Gillow v. United Kingdom, Comm. Report cited earlier, para. 146).

a) As to the first question, the Commission finds that the suspension of eviction orders comes under the emergency legislation dictated by the need to deal with a housing crisis in the aftermath of a natural disaster.

It finds that in the present case the suspension was introduced by law for a legitimate purpose and "in accordance with the general interest" within the meaning of the second paragraph of Article 1 of Protocol No. 1;

b) As to the second question, the Commission is required to verify whether *in concreto* a proper balance was struck between the general community interest and the requirements of safeguarding the applicant's basic rights.

The Commission finds in this respect that the provisions complained of by the applicant only affected his right of ownership after 13 November 1984, i.e. for about 16 months.

It finds that the suspension of the eviction orders merely protracts the effects of the lease, so that the applicant's inability to enjoy the unrestricted use of his property coincides with his right to collect rent.

The Commission notes that the applicant is indeed invoking a specific interest, namely his need to use his flat as his place of residence. In the instant case, the interest at stake is the same for the owner as for the tenant.

The Commission nevertheless holds that in view of the very serious situation confronting the Italian legislator, and in the context of emergency legislation, the legislator's opting to maintain the *status quo* in the presence of interests equally worthy of protection cannot in this case be considered unreasonable having regard to the time which has elapsed. It notes in particular the provisional nature of the suspension of eviction orders and the fact that the Italian legislator reviewed the need for this suspension at regular six-monthly intervals.

Having regard to the special circumstances of the case, and to the margin of appreciation to which States are entitled in controlling "the use of property in accordance with the general interest", the Commission finds that the sacrifice demanded of the applicant is not unreasonable when weighed against the legitimate aim pursued in accordance with the general interest by the provisions affecting his ownership.

The application is therefore manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.