



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

CASE OF IMMOBILIARE SAFFI v. ITALY

(Application no. 22774/93)

JUDGMENT

STRASBOURG

28 July 1999

In the case of Immobiliare Saffi v. Italy,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), as amended by Protocol No. 11¹, and the relevant provisions of the Rules of Court², as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,

Mr M. PELLONPÄÄ,

Mr A. PASTOR RIDRUEJO,

Mr L. FERRARI BRAVO,

Mr L. CAFLISCH,

Mr P. KŪRIS,

Mr R. TÜRMEŖ,

Mr J.-P. COSTA,

Mrs F. TULKENS,

Mrs V. STRÁŖNICKÁ,

Mr M. FISCHBACH,

Mr V. BUTKEVYCH,

Mr J. CASADEVALL,

Mr J. HEDIGAN

Mrs H.S. GREVE,

Mr R. MARUSTE,

Mrs S. BOTOCHAROVA,

and also of Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrar*,

Having deliberated in private on 20 May, 30 June and 7 July 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) and by the Italian Government (“the Government”) on 4 December 1998 and 25 January 1999 respectively, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 22774/93) against the Italian Republic lodged with the Commission under former Article 25 by Immobiliare Saffi, a company registered in Italy, on 23 September 1993.

The Commission’s request and the Government’s application referred to former Articles 44 and 48 and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (former Article 46). The object of

1-2. *Note by the Registry.* Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention.

2. On 11 January 1999 the applicant company designated Mr N. Amadei, of the Livorno Bar, as the lawyer who would represent it (Rule 36 § 3 of the Rules of Court). The Government are represented by their Agent, Mr U. Leanza.

3. In accordance with the provisions of Article 5 § 4 of Protocol No. 11 taken together with Rules 100 § 1 and 24 § 6, a panel of the Grand Chamber decided on 14 January 1999 that the case would be examined by the Grand Chamber of the Court.

4. The Grand Chamber included *ex officio* Mr B. Conforti, the judge elected in respect of Italy (Article 27 § 2 of the Convention and Rule 24 § 4), Mr. L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, Mr M. Pellonpää, President of Section, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr G. Bonello, Mr P. Kūris, Mr R. Türmen, Mrs F. Tulkens, Mrs V. Strážnická, Mr V. Butkevych, Mr J. Casadevall, Mrs H.S. Greve, Mr A.B. Baka, Mr R. Maruste and Mrs S. Botoucharova (Rule 24 § 3 and Rule 100 § 4). Subsequently Mr Conforti, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Mr L. Ferrari Bravo, the judge elected in respect of San Marino, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

5. The Grand Chamber decided not to invite the Commission to appoint a Delegate (Rule 99).

6. After consulting the Agent of the Government and the applicant company's lawyer, the Grand Chamber decided that it was not necessary to hold a hearing.

7. Subsequently Mr A. Pastor Ridruejo, Mr L. Caflisch and Mr J. Hedigan, substitute judges, respectively replaced Mrs Palm, Mr Bonello and Mr Baka, who were unable to take part in the further consideration of the case (Rule 24 § 5 (b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. I.B., a construction company, was the owner of an apartment in Livorno, which it had let to L.B.

9. In a registered letter of 20 April 1983, it informed the tenant that it intended to terminate the lease on expiry of the term on 31 December 1983 and asked him to vacate the premises by that date.

10. In November 1983 I.B. served a notice to quit (*disdetta*) on the tenant, but he refused to leave.

11. In a writ served on the tenant in November 1983, I.B. reiterated its intention to terminate the lease and summoned the tenant to appear before the Livorno magistrate (*pretore*).

12. On 21 November 1983 the magistrate upheld the validity of the notice to quit and ordered that the premises must be vacated by 30 September 1984. That decision was made enforceable on 7 December 1983.

13. On 30 May 1985 I.B. served notice (*precetto*) on the tenant requiring him to vacate the premises. On 26 September 1985 it served notice on the tenant informing him that the order for possession would be enforced by a bailiff (*significazione di sfratto*) on 19 November 1985. The bailiff made several unsuccessful attempts to enforce the order (on 19 November 1985, 28 March, 30 September and 17 December 1986, 4 April and 21 December 1987).

14. Immobiliare Saffi became the owner of the apartment in 1988 following a corporate merger with, *inter alia*, I.B. It pursued the enforcement proceedings.

15. Between 15 December 1988 and 9 January 1996 the bailiff made eleven attempts to recover possession (on 15 December 1988, 9 June and 30 October 1989, 30 October 1990, 17 February and 17 May 1991, 18 May 1992, 15 May 1993, 8 February 1994, 13 January 1995 and 9 January 1996). Each attempt proved unsuccessful, as, under the statutory provisions providing for the suspension or staggering of evictions, the applicant company was not entitled to police assistance.

16. By March 1989, when Law no. 61 of 21 February 1989 came into force providing for the staggering of the enforcement of orders for possession, requests for police assistance had been made to the Prefect of Livorno in 1,186 cases: 354 for arrears of rent, 56 because the owner

required the premises for his own use, 55 for other reasons, and 722 (the applicant company's case included) because the lease had expired.

The Prefect decreed on 16 May 1989 and 19 February 1990 that decisions on the provision of police assistance would be taken by reference to the criteria laid down in Law no. 61/89, namely the order of priority established by the legislature, the date of the request for assistance, any special features of the individual case and the requirement that 30% of the total number of orders for possession outstanding should be enforced each month.

17. In reply to a question from the Registry, counsel for the applicant company informed the Court on 30 April 1999 that the apartment had been repossessed on 11 April 1996, following the death of the tenant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. Since 1947 the public authorities in Italy have frequently intervened in residential tenancy legislation with the aim of controlling rents. This has been achieved by rent freezes (occasionally relaxed when the government decreed statutory increases), by the statutory extension of all current leases and by the postponement, suspension or staggering of the enforcement of orders for possession.

A. Statutory extensions of tenancies

19. The last statutory extension to all but a small number of specifically excepted categories of subsisting leases was introduced by Law no. 392 of 27 July 1978 ("Law no. 392/78") and was effective until 31 December 1982, 30 June 1983 or 31 December 1983, depending on the date of signature of the lease.

B. Suspension of enforcement

20. Under section 56 of Law no. 392/78, it is for the magistrate to fix the date for enforcement of the order for possession, having regard to both the tenant and the landlord's circumstances and the grounds on which the lease was terminated. Enforcement cannot be deferred for more than six, or exceptionally twelve, months.

If the tenant fails to vacate the premises within the time allowed by the magistrate the landlord may issue enforcement proceedings.

21. Orders are made enforceable by the appending of an instruction by the magistrate "to any bailiff whose services are requested, any person empowered to enforce the order, State Counsel, and any police officer to

assist in the enforcement of this order when required by law”.

22. By Articles 608 and 513 of the Code of Civil Procedure, the bailiff’s task is to enjoin the tenant to vacate the premises and he may to that end seek police assistance “whenever necessary”. The bailiff reinstates the owner in his property and returns the keys to him.

The police act as officers of the court.

23. Numerous provisions have established rules for the suspension of the enforcement of orders for possession (*ordinanze di sfratto*).

A first suspension was introduced by Legislative Decree no. 795 of 1 December 1984. Those provisions were incorporated in Legislative Decree no. 12 of 7 February 1985, which became Law no. 118/85 and covered the period from 1 December 1984 to 30 June 1985. That legislation also provided for the staggered resumption of evictions on 1 July, 30 September and 30 November 1985 and 31 January 1986, depending on when the decision that the lease had been terminated became enforceable.

Section 1(3) of Law no. 118/85 laid down that enforcement would not be suspended if repossession had been ordered on the grounds of rent arrears. Similarly, no suspension could be ordered in certain cases, for example where the landlord required the property for his own use or for the use of his spouse, children or ascendants (Article 3, first sub-paragraph, number 2, of Legislative Decree no. 629 of 15 December 1979, which became Law no. 25 of 15 February 1980 (“Law no. 25/80”)).

24. A second suspension was introduced by Legislative Decree no. 708 of 29 October 1986, which became Law no. 899 of 23 December 1986 (“Law no. 899/86”). It covered the period from 29 October 1986 to 31 March 1987 and included the same exceptions as the preceding legislation.

Law no. 899/86 also established that the prefect, after consulting a committee that included representatives of both tenants and landlords (*commissione provinciale*), was responsible for determining the criteria for authorising police assistance in evicting tenants who refused to surrender possession.

Section 3(5 *bis*) of Law no. 899/86 also provided that the eviction of any tenant entitled to subsidised housing was in all cases suspended until 31 December 1987.

25. A third suspension was introduced by Legislative Decree no. 26 of 8 February 1988, which became Law no. 108 of 8 April 1988. It initially covered the period from 8 February 1988 to 30 September 1988, which was subsequently extended until 31 December 1988.

26. A fourth suspension was introduced by Legislative Decree no. 551 of 30 December 1988, which became Law no. 61 of 21 February 1989 (“Law no. 61/89”), and covered the period up to 30 April 1989.

27. All the aforementioned laws and decrees contained additional provisions relating to the financing of subsidised housing and to housing benefits.

C. Staggering of evictions

28. Law no. 61/89 also provided that as from 1 May 1989 requests for police assistance in enforcing orders for possession would be dealt with in order of priority, as determined according to criteria established by the prefects after consultation with statutory prefectural committees, whose members included the prefect, the mayor and representatives of both tenants and landlords. Among the cases having priority were those in which it was not possible for enforcement to be suspended. In particular, priority was given to landlords urgently requiring premises as accommodation for themselves, their spouse, children or ascendants. Landlords seeking priority treatment were required to make a statutory declaration.

As regards evictions in all other cases, provision was made for police assistance to be staggered over a maximum of forty-eight months from 1 January 1990.

29. The system whereby the enforcement of orders for possession was to be staggered was extended by a series of legislative decrees including the following: from 31 December 1993 to 31 December 1995 (Legislative Decree no. 330/93); from 31 December 1995 to 29 February 1996 (Legislative Decree no. 546/95); from 29 February 1996 to 26 April 1996 (Legislative Decree no. 81/96); from 26 April 1996 to 25 June 1996 (Legislative Decree no. 217/96); and from then to 31 December 1996 (Legislative Decree no. 335/96).

D. Recent legislative developments

30. Law no. 566 of 4 November 1996 ratified a series of legislative decrees that had not been enacted as laws. It provided that police assistance would be staggered until 30 June 1997.

31. That arrangement was extended until 31 January 1998 by Legislative Decree no. 172/1997. In addition, Article 1 *bis* of that legislative decree added to the prefects' existing power to lay down general criteria for determining whether police assistance would be made available the power to decide precisely when and how police resources would be allocated in each individual case, without having to deal with requests for police assistance in the chronological order in which they were made by the bailiffs. Consequently, the prefectural committees would usually only be able to express an opinion on the general criteria to be followed in determining whether police assistance was to be given, not on whether assistance should in fact be given in a particular case.

32. By Legislative Decree no. 7/1998 the date for the resumption of evictions was postponed to 31 October 1998.

33. In a judgment (no. 321) of 24 July 1998, the Constitutional Court held that Article 1 *bis* of Legislative Decree no. 172/1997 was contrary to Article 24 of the Italian Constitution guaranteeing *inter alia* the right of access to a court, as it made the decision regarding the date of enforcement of an order for possession – which is set in advance by the magistrate in accordance with section 56 of Law no. 392/78 – subject to review by a prefect. The Constitutional Court said that the role of the prefects should be limited to cooperating – as officers of the court – in the enforcement of judicial orders for possession. The fact that their powers had been enlarged to include individual cases had led to substantial delays in the enforcement of court orders. That was contrary to every individual's entitlement to have his rights decided by a court. The Constitutional Court stressed that it was unacceptable for court orders to be undermined or affected by administrative decisions.

34. Recently, Legislative Decree no. 375 of 2 November 1998 delayed the resumption of evictions to 28 February 1999.

35. Section 6 of Law no. 431 of 9 December 1998 on the rules governing lease agreements and the vacation of residential premises provides that where an order for possession has already been made and is enforceable when that law comes into force, the landlord and tenant have six months – during which period enforcement of the order is suspended – in which to decide whether to enter into a new lease. Should no agreement be forthcoming within that period, the tenant may, within thirty days thereafter, request a magistrate to set a fresh date for the enforcement of the order. The magistrate's decision regarding the date of enforcement incorporates permission for the bailiff to seek police assistance to enforce the order.

The date of eviction may be deferred for up to a maximum of eighteen months if the tenant is aged 65 or over, if he has five or more dependent children, if he is on the list of transferable personnel (*liste di mobilità*) kept by businesses, if he is in receipt of unemployment benefit or low-paid-worker benefit, if he has been formally allocated welfare housing, if he has purchased a house that is under construction or if he owns property in respect of which repossession proceedings are pending. The same rule applies if the tenant or a member of his family who has been living with him for at least six months is handicapped or terminally ill.

PROCEEDINGS BEFORE THE COMMISSION

36. Immobiliare Saffi applied to the Commission on 23 September 1993. It alleged a violation of Article 1 of Protocol No. 1 and of Article 6 § 1 of the Convention owing to the fact that over a lengthy period it had been unable to enforce the order for possession.

37. The Commission declared the application (no. 22774/93) admissible on 6 March 1997 and 18 May 1998. In its report of 2 December 1998 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of Article 1 of Protocol No. 1 (twenty-eight votes to one); that there had been a violation of Article 6 § 1 of the Convention as regards the right of access to a tribunal (unanimously); and that no separate question arose under Article 6 § 1 as regards the length of the eviction proceedings (unanimously). The full text of the Commission's opinion and of the partly dissenting opinion contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

38. In their memorials the Government asked the Court to declare the application inadmissible as the applicant company had failed to exhaust domestic remedies or, in the alternative, to declare the complaint under Article 6 inadmissible as being incompatible *ratione materiae* with the provisions of the Convention. In the further alternative, they requested the Court to find that there had been no breach of either Article 1 of Protocol No. 1 or Article 6 § 1 of the Convention.

39. The applicant company invited the Court to find that the fact that it had been unable over a prolonged period to enforce the order for possession as it had been refused police assistance amounted to a breach of Article 1 of Protocol No. 1 and of Article 6 § 1 of the Convention.

1. *Note by the Registry.* For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

40. As before the Commission, the Government maintained that the applicant company had not exhausted domestic remedies. They said that it had failed to issue proceedings in the administrative courts challenging the refusal of police assistance and to raise, in the same proceedings, the constitutionality of the legislative provisions concerned.

41. The applicant company argued that there was no domestic remedy available enabling a landlord to complain about the inordinate time proceedings for the enforcement of a possession order took and that it was impossible to obtain a decision on whether grounds existed justifying immediate eviction. Furthermore, the fact that the prefect had not issued a decision refusing police assistance meant that no application for review could be made to the Regional Administrative Court.

42. As regards the first limb of the objection, the Court observes that prior to 1 January 1990 the enforcement of orders for possession was suspended by statute (see paragraphs 23-26 above). As Immobiliare Saffi did not satisfy the conditions laid down in the applicable statutory provisions to escape the suspension, it was not able to apply to the prefect for police assistance; nor, in the event of such an application being turned down, could it have applied to the administrative courts to challenge the prefect's decision. It follows that such a remedy would have had no prospect of success (see the *Spadea and Scalabrino v. Italy* judgment of 28 September 1995, Series A no. 315-B, p. 24, § 24 *in fine*).

As to the period subsequent to 1 January 1990, the Court observes that requests for police assistance in enforcing orders for possession had to be dealt with in order of priority, as determined according to criteria which the prefect had to establish, after consulting the prefectural committee, in the light of the rules previously used to decide in which cases enforcement of an order for possession escaped suspension (see paragraph 28 above). While it is true that the applicant company could have sought judicial review in the administrative courts of the Livorno Prefect's refusal to grant it police assistance, the Court observes that the administrative courts would only have had jurisdiction to set aside decisions of the prefect that failed to apply the criteria governing priority. In the instant case, Immobiliare Saffi's complaint was not that the prefect's decisions were arbitrary, but that the application of the criteria for determining priority had had a disproportionate impact on its right of property. Accordingly, as there was

no basis for challenging the criteria for establishing priority (most of which were laid down by statute), an application to the administrative courts cannot be regarded as having been an effective remedy. Moreover, the Government have not cited any decisions of the Italian courts showing otherwise.

As to the second limb of the objection – the constitutionality issue – the Court observes that in the Italian legal system an individual is not entitled to apply directly to the Constitutional Court for review of a law's constitutionality. Only a court trying the merits of a case has the right to make a reference to the Constitutional Court, either of its own motion or at the request of a party. Accordingly, such an application cannot be a remedy whose exhaustion is required under Article 35 of the Convention (see the *Spadea and Scalabrino* judgment cited above, p. 23, § 24).

In conclusion, the objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

43. The applicant company complained that its prolonged inability – through lack of police assistance – to recover possession of its apartment amounted to a violation of its right of property, as embodied in Article 1 of Protocol No. 1, 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.”

A. The applicable rule

44. Under the Court's case-law, Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules (see the *James and Others v. the United Kingdom* judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37). The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of

interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (see *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II).

45. The applicant company submitted that its apartment had been expropriated *de facto*, since, even if it would theoretically have been possible for it to sell the apartment, it could not have done so at market value. It said that in practice apartments with sitting tenants sold at approximately 30%-40% less than vacant apartments. It added that its rent receipts had been low, as the tenancy had been regulated by Law no. 392 of 27 July 1978.

46. Like the Commission, the Court notes that in this case there was neither a *de facto* expropriation nor a transfer of property, as the applicant company was at no stage deprived of the right to let or to sell the property. Indeed, it regained possession on 11 April 1996 (see paragraph 17 above). As the implementation of the measures in question meant that the tenant continued to occupy the apartment, it undoubtedly amounted to control of the use of property. Accordingly, the second paragraph of Article 1 is applicable (see the *Spadea and Scalabrino* judgment cited above, p. 25, § 28).

B. Compliance with the conditions in the second paragraph

1. Aim of the interference

47. The Government argued that the legislative provisions concerned pursued a legitimate aim, namely to avoid the social tensions and troubles to public order that would have occurred had the considerable number of orders for possession issued after the expiry of the last statutory extension of leases in 1982 and 1983 been enforced at the same time. They added that the State had through those same provisions made certain financial commitments to provide subsidised housing and housing benefits.

48. Like the Commission, the Court recognises that the simultaneous eviction of a large number of tenants would undoubtedly have led to considerable social tension and jeopardised public order. It follows that the impugned legislation had a legitimate aim in the general interest, as required by the second paragraph of Article 1 (see the *Spadea and Scalabrino* judgment cited above, p. 26, §§ 31-32).

2. Proportionality of the interference

49. The Court reiterates that an interference, particularly one falling to be considered under the second paragraph of Article 1 of Protocol No. 1, 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 the *Mellacher and Others v. Austria* judgment of 19 December 1989, Series A no. 169, p. 27, § 48, and *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999-III).

50. The applicant company contended that the impugned legislative provisions had been intended as emergency measures that were justified only by the fact that the sacrifice imposed on landlords was a temporary one. The legislation had, however, remained in force for too long.

While it accepted that a fair balance had to be struck between the demands of the general interest and its own interests, the applicant company pointed out that the system of staggered evictions had nevertheless proved inadequate: orders for possession continued to remain unexecuted, even when the landlord urgently needed to recover his property. Furthermore, the Livorno Prefect, in his decisions pursuant to Law no. 61/89, took no account whatsoever of the interests of landlords who – like the applicant company – wished to recover their apartments only because the lease had expired. Moreover, the actions of prefects and opinions of prefectural committees had not proved to be amenable to review by either the judge dealing with the enforcement proceedings or any other judge.

In conclusion, Immobiliare Saffi submitted that, as it had been left in a state of uncertainty for too long without being able to react, the legislative provisions concerned had imposed an excessive burden on it.

51. The Government pointed out that the only ground for eviction in the present case had been the expiration of the lease; that did not warrant the applicant company's being given any priority in the provision of police assistance. The interference with its right to peaceful enjoyment of its property was therefore consistent with the relevant legislation. They referred in particular to the Court's conclusion in the case of *Spadea and Scalabrino* that the legislation was appropriate to achieve the legitimate aim pursued, regard being had in particular to the margin of appreciation afforded by the second paragraph of Article 1 of Protocol No. 1.

The Government concluded that the burden imposed on the applicant company had not been excessive.

52. The Court observes that, in order to deal with the chronic housing shortage, the Italian government adopted a series of emergency measures designed to control rent increases and to extend the validity of existing leases (see paragraphs 18-19 above). In 1982 and 1983, when the last statutory extension expired, the Italian State considered it necessary to resort to emergency provisions to suspend the enforcement of non-urgent orders for possession (see paragraphs 20-26 above).

As the Government rightly said, the Court has previously held that those legislative measures could reasonably be regarded as appropriate to achieve the legitimate aim pursued, regard being had to the need to strike a fair balance between the interests of the community and the right of landlords (see the *Spadea and Scalabrino* judgment cited above, p. 27, § 41).

53. Subsequently, when the final period of suspension of evictions had ended, the Italian State considered it appropriate for orders for possession to be enforced in cases to which the suspension rules did not apply, according to an order of priority established by the prefect after consulting the prefectural committee. On the other hand, non-priority cases, such as the present one, were to be enforced within a maximum period of four years starting on 1 January 1990 (see paragraph 28 above).

The authorities quite clearly thought that they would be able to carry out all, or, failing that, a large part of the urgent evictions before 1 January 1990, such that there would have been nothing further to prevent police assistance being made available in non-urgent cases, which should therefore have been dealt with by the end of 1993.

That, however, did not happen. From January 1990 onwards requests for police assistance were dealt with, as provided for by Law no. 61/89, in order of priority, without any adjustment being made to the system, even though the number of urgent evictions was going up, not down, and the existence of outstanding urgent eviction proceedings was to all intents and purposes preventing non-urgent cases, whose number was rising substantially, from being processed.

Requesting police assistance became a separate step in the proceedings within the remit of the prefect, who could suspend the magistrate's instruction (whether issued to a bailiff or the police) for the enforcement of an order for possession on the date set by the magistrate.

54. Like the Commission, the Court considers that, in principle, a system of temporary suspension or staggering of the enforcement of court orders followed by the reinstatement of the landlord in his property 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.

The Court observes that the Italian system suffered from a degree of inflexibility: by providing that cases in which the lease has been terminated on the ground that the landlord urgently needs to recover the apartment for himself or his family should always be given priority, it automatically made the enforcement of non-urgent orders for possession dependent on there being no requests warranting priority treatment. It followed that, since there were always a large number of priority requests outstanding, non-urgent orders were in practice never enforced after January 1990.

The provision of police assistance, which the prefect determined by reference to an order of priority, therefore ended up depending almost entirely on the volume of prior-ranking requests for police assistance and the number of police officers at the prefect's disposal.

The Court notes that during that administrative phase no court had jurisdiction to rule on the impact which the delays caused by this system might have in a particular case, as the prefect's action that had caused the delays was authorised and its scope defined by the legislation in issue (see paragraph 42 above and, *a contrario*, the following judgments: AGOSI v. the United Kingdom of 24 October 1986, Series A no. 108, p. 19, § 55; Air Canada v. the United Kingdom of 5 May 1995, Series A no. 316-A, p. 18, §§ 44-46; and Gasus Dosier- und Fördertechnik GmbH v. the Netherlands of 23 February 1995, Series A no. 306-B, p. 53, §§ 73-74). Further, the Court stresses that, unlike section 56 of Law no. 392/78, the emergency measures concerned did not lay down a deadline by which the landlord was assured of recovering possession.

55. The Court observes that I.B. obtained an order for possession on 21 November 1983 and the judge ordered the tenant to vacate by 30 September 1984 (see paragraph 12 above). Over the ensuing six years until 1990, first I.B., and then Immobiliare Saffi, were caught by the effects of legislation that suspended, on each occasion for a period of a few months, enforcement of non-urgent possession orders (see paragraphs 23-26 above). In 1989 Immobiliare Saffi, one of 722 landlords not entitled to priority treatment in the provision of police assistance (see paragraph 16 above), gained the right under Law no. 61/89 to such assistance at some stage between 1 January 1990 and the end of 1993, at the latest. In December 1993, however, the final deadline was extended to 31 December 1995, only subsequently to be extended to 29 February 1996 and, lastly, to 26 April 1996 (see paragraphs 28-29 above). On 11 April 1996 the applicant company finally recovered its apartment, not, it might be added, with police assistance, but as a result of the death of the tenant (see paragraph 17 above).

56. For approximately eleven years, and especially from January 1990 onwards, firstly I.B. and later Immobiliare Saffi were thus left in a state of uncertainty as to when they would be able to repossess their apartment. They could not apply to either the judge dealing with the enforcement proceedings, who at the outset had considered it reasonable to impose a delay (of less than a year) on I.B., or the administrative court, which would not have been able to set aside the prefect's decision to give priority to any pending urgent cases, as that decision was an entirely legitimate one. Neither I.B. nor Immobiliare Saffi had any means of compelling the government to take into account any particular difficulties they might encounter as a result of the delay in the eviction (see, *mutatis mutandis*, the *Sporrong and Lönnroth v. Sweden* judgment of 23 September 1982, Series A no. 52, pp. 26-27, §§ 70-71).

57. Likewise, the applicant company has no prospect of obtaining compensation through the Italian courts for its protracted wait, one during which it was unable to sell or let the apartment at market value.

58. Furthermore, nothing in the file suggests that the tenant occupying the applicant company's premises deserved any special protection.

59. In the light of the foregoing, the Court agrees with the Commission that the system of staggering the enforcement of orders for possession, coupled with what had already been a six-year wait because of the statutory suspension of the enforcement of such orders, imposed an excessive burden on the applicant company and accordingly upset the balance that must be struck between the protection of the right of property and the requirements of the general interest.

Consequently, there has been a violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

60. The applicant company also alleged a breach of Article 6 § 1 of the Convention, the relevant part of which provides:

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

61. The Court observes that the applicant company had originally relied on Article 6 in connection with its complaint regarding the length of the proceedings for possession. Like the Commission, the Court nonetheless considers that the instant case must firstly be examined in connection with the more general right to a court.

A. Whether Article 6 is applicable

62. The Government did not dispute the fact that the proceedings before the magistrate related to the applicant company's civil rights within the meaning of Article 6. However, they maintained that the arrangements for staggering police assistance were not part of the judicial process for enforcement of orders for possession, since police intervention was an administrative issue, entirely separate from and independent of the judicial process. The Government stressed in that connection that it was not in their capacity as officers of the court that prefects were empowered to stagger evictions, but as part of their duties as an administrative authority responsible for maintaining public order.

Owing to its special purpose, police assistance could not be regarded merely as a method of enforcing judgments, and one that was available automatically: rather, its function was to protect the overriding general interest. That administrative phase could under no circumstances be said to come within the scope of Article 6.

63. The Court acknowledges that the Italian procedure for the enforcement of orders for possession differs in a number of ways from enforcement proceedings in the strict sense and notes that it has examined this issue before, in the case of *Scollo v. Italy*, in which it concluded that "[e]ven if, in the instant case, it is not possible to speak of enforcement proceedings in the strict sense, ... Article 6 § 1 is applicable, regard being had to the purpose of the proceedings which was to settle the dispute between the applicant and his tenant" (judgment of 28 September 1995, Series A no. 315-C, p. 55, § 44). The Court observes that the applicant company issued proceedings before the Livorno magistrate for an order confirming termination of the lease and requiring the tenant to vacate the premises. As the tenant did not contest termination, the only outstanding point concerned the date of repossession. For so long as that date was put back owing to the tenant's refusal to leave voluntarily, which entailed a *de facto* extension to the lease and a subsequent restriction on the applicant company's right of property, there continued to be a "dispute" ("*contestation*") for the purposes of Article 6.

In any event, the Court recalls that the right to a court would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention.

Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see the *Hornsby v. Greece* judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40).

Article 6 is therefore applicable in the present case.

B. Compliance with Article 6

64. The applicant company complained that the enforcement proceedings lasted approximately thirteen years. Furthermore, it said that as a result of the action of the Livorno Prefect and the prefectural committee, who examined orders for possession on a case-by-case basis in order to determine which would be enforced, there had been a breach of the order of the Livorno magistrate, who had set the date by which the premises had to be vacated in the proceedings on the merits. Immobiliare Saffi had from 30 September 1984 onwards thus been denied access to a court to exercise its right to recover its apartment and to have the order for possession enforced.

65. The Court notes that a landlord cannot seek to enforce an order for possession against a tenant until the date which the magistrate, having regard to the special needs of both the landlord and the tenant and the reasons for the eviction, sets in the order. The maximum period for a stay of execution is statutorily fixed at six, or in exceptional cases twelve, months, after which the landlord must be allowed to enforce the order (see paragraph 20 above). The Livorno magistrate had ruled that I.B. would be entitled to enforce its order as from 30 September 1984. This date, though, was postponed (on each occasion for several months at a time) by legislation passed between December 1984 and April 1989 (see paragraphs 23-26 above).

66. The Court reiterates that 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*, the *Hornsby* judgment cited above, p. 510, § 40). Accordingly, the execution of a judicial decision cannot be unduly delayed.

67. The applicant company, however, had no particular complaint about that statutory suspension of enforcement of its order for possession. Its complaint was rather that the Italian legislature had conferred on the prefect and the prefectural committee the power to examine orders for possession on a case-by-case basis in order to determine which should be enforced; the Livorno magistrate’s decision had thus been rendered inoperative.

68. The Government contended on that point that although prefects, as officers of the court, were required to provide assistance for the execution of enforceable court decisions, they were also empowered, in their capacity as

the administrative authority responsible for maintaining public order, to turn down requests for police assistance if its provision threatened to cause a serious disturbance of public order. The fact that they had such a power did not entail a denial of the right to a court as guaranteed by Article 6 § 1 of the Convention, as the prefects were required to comply with the general criteria and their decisions were subject to judicial review.

69. The Court accepts that a stay of execution of a judicial decision for such period as is strictly necessary to enable a satisfactory solution to be found to public-order problems may be justified in exceptional circumstances.

70. The present case does not, however, concern, as the Government seem to suggest, an isolated refusal by the prefect to provide police assistance, owing to the risk of a serious disturbance of public order.

In the instant case, enforcement of the order was stayed after January 1990 as a result of the intervention of the legislature, which reopened the magistrate's decision regarding the date by which the tenant was required to vacate the premises. For a period of more than six years starting on 1 January 1990, enforcement of the order for possession in favour of I.B. was postponed on a number of occasions (see paragraphs 28-29 above). Indeed, the tenant was never actually evicted as Immobiliare Saffi recovered its apartment after his death. The legislature, presuming that the risk that had been noted in 1984 of serious breaches of public order remained – as a large number of evictions had to be enforced at the same time – conferred a power, and possibly a duty, on prefects, as the authority responsible for maintaining public order, to intervene systematically in the enforcement of orders for possession, while at the same time defining the scope of that power.

71. The Court notes, firstly, that the postponement of the date by which the premises had to be vacated rendered nugatory the Livorno magistrate's decision on that point in his order of 21 November 1983. It should be noted in this connection that the decision on whether police assistance should be provided is made on the basis of the same factors – the situation of the landlord and tenant, and the grounds for eviction – as those the magistrate takes into consideration under section 56 of Law no. 392/78.

72. In addition, the Court observes that the assessment whether it was appropriate subsequently to stay enforcement of the order for possession and therefore *de facto* to extend the lease, was not subject to any effective review by the courts, since the scope of judicial review of the prefect's decision was limited to verifying whether he had complied with the criteria governing the order of priority (see paragraph 42 above).

73. Furthermore, the fact that the system for staggering the provision of police assistance was extended on a six-monthly basis for almost nine years (see paragraphs 28-34 above) gives the impression that the Italian

authorities were content to rely on that system rather than to seek effective alternative solutions to the public-order problems in the housing sector.

74. In conclusion, while it may be accepted that Contracting States may, in exceptional circumstances and, as in this instance, by availing themselves of their margin of appreciation to control the use of property, intervene in proceedings for the enforcement of a judicial decision, the consequence of such intervention should not be that execution is prevented, invalidated or unduly delayed or, still less, that the substance of the decision is undermined.

In the present case, as the Court explained in paragraphs 54-56 above in connection with the complaint under Article 1 of Protocol No. 1, the impugned legislation rendered nugatory the Livorno magistrate's ruling in his order of 21 November 1983. Further, from the moment the prefect became the authority responsible for determining when the order for possession would be enforced, and in the light of the fact that there could be no effective judicial review of his decisions, the applicant company was deprived of its right under Article 6 § 1 of the Convention to have its dispute (*contestation*) with its tenant decided by a court. That situation is incompatible with the principle of the rule of law.

Consequently, there has been a violation of Article 6 § 1 of the Convention.

75. As to the complaint concerning the length of the proceedings, the Court considers that it must be regarded as having been absorbed by the preceding complaint (see paragraphs 64-73 above).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

77. The applicant company sought reparation for the pecuniary damage it had sustained, which it calculated as follows:

- (a) 6,274,408 Italian lire (ITL), for bailiffs' and lawyers' fees incurred in the enforcement proceedings;
- (b) ITL 37,200,000, for loss of rent (ITL 582,000 a month from August 1992 to the end of 1997);
- (c) ITL 564,179,000, resulting from the fact that it had not been able to realise the property.

It also requested ITL 20,000,000 for non-pecuniary damage.

78. The Government maintained that there was no causal link between the amounts claimed for pecuniary damage and the alleged violations. More particularly, with regard to reimbursement of the costs and expenses of the enforcement proceedings, they considered that no award should be made. They contested the basis on which the loss of rent had been calculated, as rent could vary according to the condition and size of the apartment and the applicant company had failed to supply any details. They also contended that there was no evidence of any loss stemming from the alleged inability to realise the apartment.

Lastly, as regards the alleged non-pecuniary damage, the Government submitted that a finding of a violation would in itself constitute sufficient just satisfaction.

79. The Court considers that the amount claimed under (a) must be reimbursed in part; it refers to its decision on that point in the Scollo case (see the Scollo judgment cited above, p. 56, § 50). It reiterates, however, that under Article 41 of the Convention it will order reimbursement only of the costs and expenses that are shown to have been actually and necessarily incurred and reasonable as to quantum (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). The Court notes that it appears from the document produced by the applicant company in support of its claim that only ITL 2,832,150 relate to the claim under (a), the remainder being related to other proceedings whose existence and purpose were unknown to the Court. It accordingly decides to award the sum of ITL 2,832,150 only.

As to (b), the Court finds the applicant company's basis for calculation reasonable but considers that an award should be made under this head only up to April 1996, when Immobiliare Saffi recovered possession of its apartment. Consequently, it decides to award the sum of ITL 25,608,000.

As regards, lastly, the sum claimed under (c), the Court points out that there has been no expropriation or situation tantamount to a deprivation of property, but a reduced ability to dispose of the possessions in question (see the *Matos e Silva, Lda., and Others v. Portugal* judgment of 16 September 1996, *Reports* 1996-IV, p. 1117, § 101). As there is no evidence that the applicant company had attempted, but had not been able, to sell the property, this claim is dismissed.

As regards non-pecuniary damage, the Court considers that it is unnecessary to examine whether a commercial company may allege that it has sustained non-pecuniary damage through anxiety as, having regard to the facts of the case, it decides to make no award under this head.

B. Costs and expenses

80. Finally, the applicant company sought reimbursement only of the costs it had incurred before the Commission, which it put at ITL 27,054,500.

81. The Government left the issue to the Court's discretion, though it said that the amount claimed was excessive.

82. The Court observes that the applicant company's lawyer at no stage informed the Commission that his client had recovered possession of the apartment in April 1996. He only informed the Court on 30 April 1999, on enquiry by the Registry. He nonetheless made a claim in respect of pecuniary damage allegedly sustained by his client up to the end of 1997.

Under the circumstances, the Court considers it appropriate to award ITL 5,000,000 only.

C. Default interest

83. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 2.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a breach of Article 1 of Protocol No. 1;
2. *Holds* that there has been a breach of Article 6 § 1 of the Convention as regards the right to a court;
3. *Holds* that the complaint under Article 6 § 1 regarding the length of the proceedings is absorbed by the preceding complaint;
4. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months, the following amounts:
 - (i) 28,440,150 (twenty-eight million four hundred and forty thousand one hundred and fifty) Italian lire for pecuniary damage;
 - (ii) 5,000,000 (five million) Italian lire for costs and expenses;
 - (b) that simple interest at an annual rate of 2.5% shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* the remainder of the applicant company's claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 July 1999.

Luzius WILDHABER
President

Maud DE BOER-BUQUICCHIO
Deputy Registrar