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

COURT (CHAMBER)

CASE OF SCOLLO v. ITALY

(Application no. 19133/91)

JUDGMENT

STRASBOURG

28 September 1995

In the case of Scollo v. Italy [1],

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A [2], as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr F. MATSCHER,
Mr L.-E. PETTITI,
Mr B. WALSH,
Mr C. RUSSO,
Mr S.K. MARTENS,
Mr A.N. LOIZOU,
Mr L. WILDHABER,
Mr G. Mifsud BONNICI,

and also of Mr H. PETZOLD, *Registrar*,

Having deliberated in private on 23 March and 1 September 1995,

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") on 7 July 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 19133/91) against the Italian Republic lodged with the Commission under Article 25 (art. 25) by an Italian national, Mr Francesco Salvatore Scollo, on 19 November 1991.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object 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 para. 1 of the Convention (P1-1, art. 6-1).

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[1] 1. The case is numbered 24/1994/471/552. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

[2] Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. On 22 August 1994 the President of the Court decided that, in the interests of the proper administration of justice, this case should be referred to the Chamber constituted on 18 July 1994 to hear the case of Spadea and Scalabrino v. Italy [3] (Rule 21 para. 6). That Chamber included ex officio Mr C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). The other seven members, whose names had been drawn by lot in the presence of the Registrar, were Mr F. Matscher, Mr L.-E. Pettiti, Mr B. Walsh, Mr S.K. Martens, Mr A.N. Loizou, Mr L. Wildhaber and Mr G. Mifsud Bonnici (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Italian Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's and the applicant's memorials on 18 and 31 January 1995 respectively. The Delegate of the Commission did not submit any written observations.

5. On 20 March 1995 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the decision of the President, who had given the applicant and his lawyer leave to use the Italian language (Rule 27 para. 3), the hearing took place in public in the Human Rights Building, Strasbourg, on 21 March 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr G. RAIMONDI, magistrato, on secondment
to the Diplomatic Legal Service,
Ministry of Foreign Affairs, *Co-Agent*,

Mr V. ESPOSITO and Mr G. COLLA, magistrati, on secondment to
the Legislation Office, Ministry of Justice, *Counsel*;

(b) for the Commission

Mr B. CONFORTI, *Delegate*;

(c) for the applicant

Mr E. SINIGAGLIA, avvocato, *Counsel*,
Mr M. DE STEFANO, avvocato, *Adviser*.

[3] Case no. 23/1994/470/551.

The Court heard addresses by Mr Conforti, Mr Sinigaglia, Mr de Stefano, Mr Raimondi and Mr Colla.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

7. Mr Francesco Salvatore Scollo lives in Rome.

8. On 14 June 1982 he bought a flat that had been let to a Mr V. since 1962. The rent for this flat was subject to control by the public authorities. The lease had been tacitly renewed until Law no. 392 of 27 July 1978 came into force, by which it had been extended until 31 December 1983.

9. In a registered letter received on 20 January 1983 the applicant informed Mr V. that he intended to terminate the tenancy when the lease expired, that is to say on 31 December 1983, and asked him to move out of the flat by that date.

10. In a writ issued on 24 February 1983 and served on 4 March 1983, Mr Scollo gave Mr V. notice to quit and summoned him to appear before the Rome magistrate (pretore) on 22 March 1983.

On 22 April 1983 the magistrate formally confirmed the notice to quit and set the date of eviction at 30 June 1984. The decision was made enforceable the same day and was served on the tenant at the beginning of October 1983.

11. Subsequently, on an application by Mr V., the magistrate deferred execution until 31 October 1984, pursuant to Law no. 94 of 25 March 1982, which had extended existing leases for a period of two years. Nevertheless, the tenant remained in occupation even after that date.

12. The applicant then began enforcement proceedings, by means of a notice dated 24 November 1984 that was served on Mr V. on 5 December 1984. He required Mr V. to quit the premises within ten days of receiving the notice and informed him that if he did not leave of his own accord, the order for possession would be enforced.

13. In a notice served on 19 December 1984 the bailiff informed Mr V. that he would be evicted on 23 January 1985. When the bailiff went to the flat on that date, however, the tenant refused to leave.

The bailiff arranged to make his next visit to the premises on 13 March 1985, but in the meantime emergency legislation (Legislative Decree no. 12 of 7 February 1985, which became Law no. 118 of 5 April 1985) came into force. This had been made necessary by an exceptionally severe housing shortage in certain cities, including Rome. Enforcement of evictions was suspended until 30 June 1985. In the instant case, as the applicant had

obtained an order for possession before 30 June 1983, he was entitled under Law no. 118 to enforce it from 1 July 1985 onwards.

14. Between then and the entry into force, on 29 October 1986, of Legislative Decree no. 708, of the same date, suspending forcible evictions until 31 March 1987, the bailiff made nine attempts to evict Mr V., who on each occasion refused to leave the flat. Legislative Decree no. 708 (which became Law no. 899 of 23 December 1986) gave the Prefect (prefetto) power to grant police assistance to enforce evictions in the cases provided for.

15. Between 1 April 1987 and 8 February 1988 the bailiff made eight unsuccessful attempts to evict Mr V. In a deed dated 3 November 1987 Mr Scollo made a solemn declaration under sections 2 and 3 of Law no. 899 of 23 December 1986 that he needed to recover his flat in order to live there with his family. He said that his case should accordingly be given priority.

16. On 8 February 1988 a new series of laws came into force suspending forcible evictions until 30 April 1989.

17. Between 1 May 1989 and 15 October 1991 the bailiff made eighteen unsuccessful attempts to persuade the tenant to leave. In the meantime (on 1 and 24 September 1989) the applicant's lawyer wrote two letters to the prefectoral committee which had been set up pursuant to Law no. 61 of 21 February 1989 and had power to grant police assistance, pointing out that his client's case had priority. He cited the fact that the tenant had ceased to pay the full rent and stated that his client needed the flat. He emphasised that Mr Scollo was a diabetic, 71% disabled and unemployed.

The prefectoral committee did not reply, even though a fresh declaration of necessity had been enclosed in the first letter it received. In this second declaration Mr Scollo had stated that he could not immediately occupy a second flat he had been obliged to buy in 1989, on account of the extensive work required to convert the property.

18. On 1 December 1989 the applicant brought proceedings in the magistrate's court, arguing that the suspension of forcible evictions was not applicable to his case, as the tenant had been refusing to pay part of the rent since November 1987. On 12 December the magistrate ordered the parties to appear on 7 February 1990. On that date Mr V. paid the sums due and the case was struck out of the list.

19. On 31 January 1995 Mr Scollo informed the European Court that after a further visit by the bailiff on 5 January 1995 he had recovered his flat on 15 January.

II. RELEVANT DOMESTIC LAW

20. On the basis of the Commission's report, Italian legislation on residential property leases may be summarised as follows.

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 evictions.

1. As regards the statutory extension of tenancies

The last statutory extension of all current leases, with the exception of certain cases specifically prescribed by the Law, was introduced by Law no. 392 of 27 July 1978 and remained in force until 31 December 1982, 30 June 1983 or 31 December 1983, depending on the dates on which the leases were signed.

It should, however, be noted that, as regards buildings used for purposes other than housing, the statutory extension of current leases prescribed by section 1 (9 bis) of Law no. 118 of 5 April 1985 was declared unconstitutional in a decision (no. 108) handed down by the Constitutional Court on 23 April 1986. In its decision the court held that the statutory restrictions imposed on property rights under Article 42 of the Constitution, with a view to ensuring social justice, made it possible to regard controls imposing restrictions as legitimate, provided that such controls were of an exceptional and temporary nature, but that perpetuating such restrictions was incompatible with the protection of property rights embodied in Article 42 of the Constitution.

In its decision the Constitutional Court also pointed out that the statutory six-month extension of leases prescribed by Law no. 118 should not be considered in isolation but within the context of tenancy provisions as a whole. The court drew particular attention to the fact that this extension succeeded other statutory extensions and could mark the beginning of new restrictions on freedom of contract in this field. Moreover, the statutory extension of leases had the effect of prolonging contracts in which the rent, notwithstanding the increases allowed in accordance with rises in the cost of living, were not even approximately in line with current socio-economic conditions. Further, the Law concerned did not give the lessor the possibility of regaining possession of the property except in cases of absolute necessity.

The Constitutional Court also held that Law no. 118, inasmuch as it provided for a blanket extension of current leases without taking into consideration the particular economic circumstances of lessors and lessees - as would have been necessary to ensure social justice -, infringed the principle of the equality of citizens before the law embodied in Article 3 of the Constitution.

2. As regards enforcement

Numerous provisions have established rules for the postponement, suspension or staggering of the enforcement of judicial decisions ordering tenants to vacate the premises they occupy (ordinanze di sfratto).

A first suspension was introduced by Legislative Decree no. 795 of 1 December 1984. The provisions set forth therein were incorporated in Legislative Decree no. 12 of 7 February 1985, which became Law no. 118 of 5 April 1985. It covered the period from 1 December 1984 to 30 June 1985. This legislation also provided for the staggered resumption of forcible evictions on 1 July 1985, 30 September 1985, 30 November 1985 or 31 January 1986, depending on the date on which the judgment recording the end of the lease had become enforceable.

Section 1 (3) of Law no. 118 stipulated that such suspensions were not applicable if repossession of the premises had been ordered because arrears of rent were owed. Similarly, no suspension could be ordered in the following cases:

(a) where, after conclusion of the contract, the lessor required the property for his own use or for that of his spouse or his children or grandchildren, for residential, commercial or professional purposes, or where a lessor who intended to use the premises for one of the above-mentioned purposes (a) offered the tenant similar accommodation at a rent which he could afford and which was not more than 20% higher than the previous rent and (b) undertook to pay the costs of the tenant's removal (Article 59, first subsection, paragraphs 1, 2, 7 and 8, of Law no. 392 of 27 July 1978 ("Law no. 392")); and

(b) where, inter alia, a lessor urgently needed to regain possession of his flat as accommodation for himself, his children or his ascendants (Article 3, first paragraph, sub-paragraphs 1, 2, 4 and 5, of Legislative Decree no. 629 of 15 December 1979, which became Law no. 25 of 15 February 1980 ("Law no. 25")).

A second suspension was introduced by Legislative Decree no. 708 of 29 October 1986, which became Law no. 899 of 23 December 1986.

It covered the period from 29 October 1986 to 31 March 1987 and in sections 2 and 3 provided for the same exceptions as the provisions in the preceding legislation.

Law no. 899 of 23 December 1986 also established that the Prefect was competent to determine the criteria for authorising police assistance in evicting recalcitrant tenants, after consulting a committee including representatives of both tenants and landlords.

Section 3 (5 bis) of Law no. 899 of 23 December 1986 also provided for the automatic suspension until 31 December 1987 of forcible evictions of tenants entitled to subsidised housing.

A third suspension was introduced by Legislative Decree no. 26 of 8 February 1988, which became Law no. 108 of 8 April 1988. It first

covered the period from 8 February 1988 to 30 September 1988 and was subsequently extended from the latter date to 31 December 1988.

A fourth suspension was introduced by Legislative Decree no. 551 of 30 December 1988, which became Law no. 61 of 21 February 1989, and covered the period up to 30 April 1989. In regions suffering from natural disasters the suspension remained in force until 31 December 1989.

With the exception of urgent cases, this Law also provided that police assistance in enforcing evictions would only be authorised in gradual stages over a period of forty-eight months from 1 January 1990 and set up a prefectoral committee responsible for deciding which cases required police intervention most urgently.

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

PROCEEDINGS BEFORE THE COMMISSION

21. Mr Scollo applied to the Commission on 19 November 1991. He complained of an interference with his right to the peaceful enjoyment of his possessions, as secured by Article 1 of Protocol No. 1 (P1-1). Relying on Article 6 para. 1 (art. 6-1) of the Convention, he also alleged that his case had not been heard within a reasonable time on account of the implementation of legislative provisions suspending the enforcement of evictions, together with the impossibility of having eviction enforced when this course of action was theoretically open to him.

22. The Commission declared the application (no. 19133/91) admissible on 5 April 1993. In its report of 9 May 1994 (Article 31) (art. 31), it expressed the opinion by twenty-one votes to two that there had been a violation of Article 1 of Protocol No. 1 (P1-1) and by twenty-two votes to one that it was not necessary to examine the complaint under Article 6 para. 1 (art. 6-1) of the Convention. The full text of the Commission's opinion and of the two dissenting opinions contained in the report is reproduced as an annex to this judgment [4].

[4] Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 315-C of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

23. In their memorial the Government asked the Court to hold that there had been no breach of either Article 1 of Protocol No. 1 or Article 6 para. 1 (P1-1, art. 6-1) of the Convention.

AS TO THE LAW

I. SCOPE OF THE CASE

24. In addition to Article 1 of Protocol No. 1 and Article 6 para. 1 (P1 1, art. 6-1)) of the Convention in respect of the right to a hearing within a reasonable time, the applicant relied before the Court on Article 14 of the Convention read in conjunction with the first of those provisions (P1-1, art. 14) and on Article 6 para. 1 (art. 6-1) in respect of the right of access to a court.

In the Court's view, however, the latter two complaints are outside the scope of the case as defined by the Commission's decision on admissibility (see, among other authorities, mutatis mutandis, the Brincat v. Italy judgment of 26 November 1992, Series A no. 249-A, p. 10, para. 16).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

25. According to the applicant, the fact that for a prolonged period it had been impossible for him to recover his flat, owing to the implementation of emergency legislative provisions on residential property leases, had infringed his right to the peaceful enjoyment of his possessions, enshrined in Article 1 of Protocol No. 1 (P1-1), 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 (P1-1) 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

26. Article 1 (P1-1) guarantees in substance the right of property. It comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph (P1-1) 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 (P1-1), covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph (P1-1), recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. However, the rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property. They must therefore be construed in the light of the general principle laid down in the first rule (see, among other authorities, the Mellacher and Others v. Austria judgment of 19 December 1989, Series A no. 169, pp. 24-25, para. 42).

27. Like the Commission, the Court notes that in this case there was neither a transfer of property nor, contrary to Mr Scollo's submissions, a de facto expropriation. At all times the applicant retained the possibility of alienating his property and received rent - in full until October 1987 and only in part between November 1987 and February 1990 (see paragraphs 17 and 18 above).

As the implementation of the measures in question meant that the tenant continued to occupy the flat, it undoubtedly amounted to control of the use of property. Accordingly, the second paragraph of Article 1 (P1-1) is applicable.

B. Compliance with the conditions in the second paragraph (P1-1)

28. The second paragraph (P1-1) reserves to States the right to enact such laws as they deem necessary to control the use of property in accordance with the general interest.

Such laws are especially common in the field of housing, which in our modern societies is a central concern of social and economic policies.

In order to implement such policies, the legislature must have a wide margin of appreciation both with regard to the existence of a problem of public concern warranting measures of control and as to the choice of the detailed rules for the implementation of such measures. 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 judgment previously cited, pp. 25-26, para. 45).

1. Aim of the interference

29. The applicant argued that the laws in issue had no legitimate aim; in substance, the fact that the respondent State had no effective housing policy had deprived him of his right to dispose of his flat, since the tenant's interests alone had been protected. The Government were not entitled to justify the emergency legislation by invoking the general interest.

30. Like the Commission, the Court observes that the legislative provisions suspending evictions during the period from 1984 to 1988 were prompted by the need to deal with the large number of leases which expired in 1982 and 1983 and by the concern to enable the tenants affected to find acceptable new homes or obtain subsidised housing.

To have enforced all evictions simultaneously would undoubtedly have led to considerable social tension and jeopardised public order.

31. In conclusion, the impugned legislation had a legitimate aim in the general interest, as required by the second paragraph of Article 1 (P1-1).

2. Proportionality of the interference

32. As the Court stressed in the Mellacher and Others judgment previously cited (p. 27, para. 48), the second paragraph of Article 1 of Protocol No. 1 (P1-1) must be construed in the light of the principle laid down in the first sentence of the Article (P1-1). Consequently, an interference must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, the Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, p. 26, para. 69). The concern to achieve this balance is reflected in the structure of Article 1 (P1-1) as a whole (ibid.), and therefore also in its second paragraph (P1-1). There must be a reasonable relationship of proportionality between the means employed and the aim pursued (see the James and Others v. the United Kingdom judgment of 21 February 1986, Series A no. 98, p. 34, para. 50).

33. Mr Scollo contended that the interference in question was disproportionate. He emphasised that he was a "small property-owner" who wanted to occupy his own flat in order to live there with his family and he criticised the inertia of the Italian State, which, by ignoring his two "declarations of necessity", had obliged him to incur debts in order to buy another flat.

34. The Government maintained that when, in February 1983, Mr Scollo brought the proceedings in question, the only ground adduced to justify the tenant's eviction had been the end of the current lease. Mr Scollo's declaration that it was absolutely necessary for him to recover his property in order to live in it with his family had not been made until 3 November 1987. Furthermore, the situation had not continued up to

15 January 1995, when Mr V. vacated the premises, but had ended by 6 June 1994, when Mr Scollo wrote to the Prefect of Rome informing him that he no longer needed his flat as he was occupying another one, which he had bought in 1989.

It followed that, regard being had to the exceptional housing shortage it had to deal with, the Italian State had not gone beyond the margin of appreciation allowed by Article 1 of Protocol No. 1 (P1-1).

35. The Court notes that housing shortages are an almost universal problem of modern society.

In order to deal with this problem, the Italian Government adopted a series of emergency measures designed firstly to control rent increases through rent freezes mitigated by occasional rises and secondly to extend the validity of existing leases. The situation in Italy became more complex when the industrialisation of the large northern cities sucked in people from the most disadvantaged regions and from rural areas in general.

36. In 1982 and 1983, when the last statutory extension, brought in by Law no. 118, expired, the Italian State considered it necessary to resort to emergency provisions to postpone, suspend or stagger the enforcement of court orders requiring tenants to vacate the premises they occupied. However, these measures provided for exceptions under which, among other things, landlords who urgently needed to recover their property or who were owed arrears of rent could obtain police assistance to enforce eviction.

37. In order to determine whether these provisions were proportionate to the aim it was sought to achieve - protecting the interests of tenants on low incomes and avoiding the risk of any prejudice to public order - the Court, like the Commission, considers it necessary to ascertain whether, in the instant case, Mr Scollo's tenant was treated in such a way that a balance was maintained between the relevant interests.

38. The Court accepts the Government's argument that Mr Scollo did not have an urgent need to recover his property for the whole of the period concerned, but does not accept the conclusion drawn from it.

Notwithstanding Mr Scollo's "solemn" declaration of 30 November 1987, which should have meant that he was given priority for the granting of police assistance to enforce eviction, the Prefect never issued an order to that effect, and the attempts of the bailiff, acting on each occasion at Mr Scollo's request, were wholly unsuccessful. In addition, Mr Scollo's lawyer twice wrote to the prefectoral committee (on 1 and 24 September 1990) emphasising that his client's case should be dealt with speedily, as he needed the flat, had no job and was 71% disabled; moreover, since 30 November 1987 Mr V. had not been paying him the full rent.

The competent authorities took no action whatsoever in response to these two requests, even though a fresh "declaration of necessity" had been enclosed in the first letter (see paragraph 17 above).

39. Although in the instant case the statutory conditions for enforcement of eviction during the period when this procedure was suspended were satisfied, Mr Scollo did not recover his property until 15 January 1995, and then only because the tenant left of his own accord. In the meantime, he had been obliged not only to buy another flat but also to bring an action to settle the problem of the partly unpaid rent (see paragraphs 17 and 18 above).

3. Conclusion

40. The Court concludes that, by adopting emergency measures and providing for certain exceptions to their application (see paragraph 20 above), the Italian legislature was reasonably entitled to consider, having regard to the need to strike a fair balance between the interests of the community and the right of landlords, and of the applicant in particular, that the means chosen were appropriate to achieve the legitimate aim. However, the restriction on Mr Scollo's use of his flat resulting from the competent authorities' failure to apply those provisions was contrary to the requirements of the second paragraph of Article 1 of Protocol No. 1 (P1-1). It follows that there has been a breach of that Article (P1-1).

III. ALLEGED VIOLATION OF ARTICLE 6 para. 1 (art. 6-1) OF THE CONVENTION

41. The applicant also complained of the excessive length of the enforcement proceedings. He relied on Article 6 para. 1 (art. 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 ..."

42. Before the Commission the Government contested the applicability of this provision (art. 6-1). They argued that, as there had not been any real proceedings, what was in fact at issue was a guarantee that the rights recognised in a judicial decision would be enforced, a matter covered in the present case by Article 1 of Protocol No. 1 (P1-1).

At the hearing before the Court the Government did not return to this point; they advanced the new argument that the situation might raise an issue of access to justice.

43. The Delegate of the Commission expressed the view that it was doubtful whether in the instant case there had been any enforcement proceedings comparable to those the Court had previously dealt with, most recently in the Silva Pontes v. Portugal case (judgment of 23 March 1994, Series A no. 286-A).

44. Even if, in the instant case, it is not possible to speak of enforcement proceedings in the strict sense, the Court considers that Article 6 para. 1

(art. 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. The period in question began on 4 March 1983, when Mr V. was summoned to appear before the magistrate (see paragraph 10 above). It ended on 15 January 1995, when the tenant vacated the premises of his own accord (see paragraph 19 above). It therefore lasted just over eleven years and ten months.

If an eviction is to be enforced, the interested party must take the initiative, and Mr Scollo did not spare any effort to obtain satisfaction, applying on numerous occasions to the bailiff, who systematically requested police assistance, as is proved by all the reports on his visits to Mr V.'s flat. However, the prefectoral committee and the Prefect never acted on these requests.

While not overlooking the practical difficulties raised by the enforcement of a very large number of evictions, the Court considers that the inertia of the competent administrative authorities engages the responsibility of the Italian State under Article 6 para. 1 (art. 6-1).

45. There has accordingly been a breach of that provision (art. 6-1).

IV. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

46. By Article 50 (art. 50) of the Convention,

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

47. Mr Scollo first claimed 13,634,280 Italian lire (ITL) for pecuniary damage, representing the bailiff's fees and the fees of a lawyer in the enforcement proceedings. He also requested ITL 30,000,000 in respect of non-pecuniary damage, alleging that he had suffered from not being able to recover his flat for a long time, and that during the period when he and his family had been obliged to lodge with his mother his living conditions had been very difficult.

48. The Government maintained that the sum claimed in respect of the alleged pecuniary damage was unrelated to the alleged violations, since proceedings for the enforcement of an eviction necessarily entailed costs. They also cited a recent judgment of the Court of Cassation, as a result of which, they said, it was now possible to recover bailiff's and lawyer's fees from a tenant. With regard to non-pecuniary damage, the Government

considered that if the Court found a violation, this would of itself constitute sufficient just satisfaction; in the alternative, the sum claimed was excessive.

49. The Delegate of the Commission considered that the applicant was entitled to just satisfaction but left the amount to the Court's discretion.

50. The Court does not accept the Government's argument. In the circumstances, the applicant cannot be expected to bring an action against his tenant, who has already been negligent in paying his rent. It further considers that the applicant also sustained non-pecuniary damage. It accordingly decides to award the sums claimed for pecuniary and non-pecuniary damage in full.

B. Costs and expenses

51. Lastly, the applicant sought reimbursement of the costs and expenses incurred before the Convention institutions, which he put at ITL 14,280,000.

52. The Government left the matter to the Court's discretion. Having regard to the information in its possession and to its case-law on this question, the Court considers the amount sought reasonable and awards it in full.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a breach of Article 1 of Protocol No. 1 (P1-1);
2. Holds that there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention;
3. Holds that the respondent State is to pay the applicant, within three months, 13,634,280 (thirteen million six hundred and thirty-four thousand two hundred and eighty) Italian lire for pecuniary damage, 30,000,000 (thirty million) lire in respect of non-pecuniary damage and 14,280,000 (fourteen million two hundred and eighty thousand) lire in respect of costs and expenses.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 September 1995.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar