JUDGMENT NO. 121 YEAR 2020

With Judgment No. 121 of 2020, the Constitutional Court declared that, in terms of Article 117(1) of the Constitution, and in relation to Articles 6 and 13 of the European Convention on Human Rights, the question as to the constitutionality of Articles 1-*bis*, paragraph 2, 1-*ter*, paragraph 1, and 2, paragraph 1, of Law No. 89 of 24 March 2001 is unfounded, insofar as they establish that the admissibility of claims for compensation for the unreasonable length of civil proceedings is subject to submission of a request for a decision according to the simplified model of oral discussion with an immediate ruling, as this condition constitutes an effective preventive remedy, potentially accelerating the course of the proceedings and indicative of willingness of the party to collaborate with the court.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 1-*bis*, paragraph 2, 1-*ter*, paragraph 1, and 2, paragraph 1 of Law No. 89 of 24 March 2001 (Provision of equitable reparation in the event of failure to respect the reasonable time limit of a proceeding, and amendment of Article 375 of the Code of Civil Procedure), as respectively incorporated and replaced by Article 1, paragraph 777, letter a), of Law No. 208 of 28 December 2015 containing "Provisions for the formation of the annual and multi-annual budget of the State (Stability Law 2016)", initiated by the Court of Appeal of Naples, in proceedings between Andrea Giugliano and the Ministry of Justice, by an order of 24 July 2019, registered as No. 226 of the 2019 Register of Referral Orders and published in the *Official Journal* of the Republic No. 51, first special series 2019.

After hearing Judge Rapporteur Mario Rosario Morelli in chambers on 20 May, held in accordance with the Decree of the President of the Court of 20 April 2020, point 1), letter a);

having deliberated in chambers on 20 May 2020.

[omitted]

Conclusions on points of law

1.– Article 1-*bis* of Law No. 89 of 24 March 2001 (Provision of equitable reparation in the event of failure to respect the reasonable time limit of a trial and amendment of Article 375 of the Code of Civil Procedure), the so-called "Pinto Law", introduced (like the subsequent provisions under examination here) by Article 1, paragraph 777, letter *a*), of Law No. 208 of 28 December 2015, on "Provisions for the formation of the annual and multi-annual budget of the State (Stability Law 2016)", states in paragraph 1 that "a party to proceedings has the right to exercise remedies to prevent the violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified under Law No. 848 of 4 August 1955, with regard to the failure to comply with the reasonable time limit requirement referred to in Article 6(1) of the Convention itself". It adds, in paragraph 2 that "[t]hose who, despite having exercised the preventive remedies referred to in Article 1-*ter*, have suffered pecuniary or non-pecuniary loss due to the unreasonable length of the trial, are entitled to an equitable remedy".

In turn, Article 1-*ter*, paragraph 1, specifies that "1. For the purposes of this law, in civil actions, the introduction of summary civil proceedings pursuant to Articles 702-*bis et seq.* of the Code of Civil Procedure constitutes a preventive remedy in accordance with Article 1-*bis*, paragraph 1. Another preventive remedy consists in the formulation of a request to transition from ordinary to summary civil proceedings in accordance with Article 183-*bis* of the Code of Civil Procedure in the course of the hearing and, in any case, at least six months before the time limits set out in Article 2, paragraph 2-*bis*. In cases where summary proceedings are not applicable, including at appeal, an available preventive remedy is application for a decision following oral proceedings in accordance with Article 281-*sexies* of the Code of Civil Procedure at least six months before the time limits set out in Article 2, paragraph 2-*bis* have elapsed. In cases in which the court sits as a

collegiate panel, when the examining magistrate deems that the case can be decided after oral proceedings, in accordance with Article 281-*sexies* of the Code of Civil Procedure, he or she refers the case back to the panel, scheduling a collegial hearing for the closing arguments and oral proceedings". It adds, in paragraph 7, that "[t]he provisions determining the order of priority in the oral phase of proceedings remain unchanged".

Lastly, Article 2(1) of the above-mentioned law establishes that "[a]ny request for equitable reparation by a party who has not exercised the preventive remedies for the unreasonable duration of proceedings referred to in Article 1-*ter* is inadmissible".

2.– In the proceedings referred to above, the Court of Appeal of Naples raised a question as to the constitutionality of the above-mentioned Articles 1-*bis*, paragraph 2, 1-*ter*, paragraph 1, and 2, paragraph 1, of Law No. 89 of 2001, having specified that in the case of the ordinary civil proceeding in question, the preventive remedy constituted by the formulation of an application for transition from ordinary to summary civil proceedings could not be made. Indeed, the provision granting this faculty, namely Article 183-*bis* of the Code of Civil Procedure, was incorporated by Article 14(1) of Decree-law No. 132 of 12 September 2014 (Urgent dejudicialisation measures and other interventions for the elimination of backlog in civil proceedings), converted, with amendments, into Law No. 162 of 10 November 2014, had effect from 13 September 2014 and therefore could not be applied to the proceedings in question, which had been initiated before that date. On the other hand, it would have been possible to seek the preventive remedy of application for a decision following the oral discussion, in accordance with Article 281-*sexies* of the Code of Civil Procedure, at least six months before expiry of the period set out in Article 2, paragraph 2-*bis* of Law No. 89 of 2001. However, this remedy was not requested by the applicant. Nevertheless, according to the referring Court, in rendering the application for equitable compensation for excessive duration of proceedings inadmissible, the challenged provision allegedly breaches Articles 11 and 117(1) of the Constitution (the first being evoked unnecessarily and, in any case, inappropriately, since no limitation to national sovereignty emerges), in relation to Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950, ratified and implemented by Law No. 848 of 4 August 1955.

The result would, in fact, be a legal framework "entirely analogous to that already scrutinised [...] in recent Judgment No. 34 of 2019", which declared unconstitutional Article 54(2) of Decree-law No. 112 of 25 June 2008 (Urgent provisions for economic development, simplification, competitiveness, stabilisation of public finance and tax equalisation), converted, with amendments, into Law No. 133 of 6 August 2008, which, in turn, provided that a request for equitable compensation "could not be made" if "the motion to bring forward the hearing referred to in Article 71(2) of the Code of Administrative Procedure was not submitted during the administrative proceedings".

Again according to the referring court, the arguments presented with regard to this ruling are alleged to be replicable in relation to the institution of "application for a decision" and would lead to the same conclusion, namely that deeming a request for an equitable remedy inadmissible because it has not been requested within the terms of the above-mentioned request would be unconstitutional.

3.– The question is unfounded.

3.1.– In Judgment No. 34 of 2019, evoked by the referring court, this Court – given that "in European case law, domestic remedies must ensure reasonable duration of the proceedings or adequate reparation for breaches of the Convention, and a preventive remedy is such if effectively able to obtain an earlier hearing" – declared paragraph 2 of Article 54 of Decree-law No. 112 of 2008, as converted, unconstitutional as it considered that application to bring forward a proceeding – as regulated by said provision, "before its reformulation as a preventive remedy by Law No. 208 of 2015 [as per paragraph 3 of the same Article 1-*ter*, under consideration here]" – was not an obligation, but "a mere faculty of the applicant [...] simply declaring an interest established during the proceedings and a mere 'booking of a decision' (which may however be handed down after the

reasonable time limit for the corresponding level of court), becoming a formality, with respect to the non-fulfilment of which, the unreasonable and non-proportionate sanction of not allowing the claim for compensation is in line with neither the goal of limiting the duration of proceedings nor the provision of compensation in the case of excessive duration".

Hence, the acknowledged breach of the Constitution in Article 117(1) of the Constitution, and the interposed ECHR provisions, is considered to absorb any other censure.

3.2.– On the basis of similar arguments, subsequent Judgment No. 169 of 2019 declared unconstitutional the parallel provision of Article 2, paragraph 2-*quinquies*, letter e) of the "Pinto Law" (later implicitly repealed by Article 1, paragraph 777, letter c) of Law No. 208 of 2015) – which, while in force, established that "[n]o compensation shall be granted [...] if the accused has not filed a motion to expedite the criminal proceedings within thirty days after exceeding the limit [of reasonable duration]".

Also that motion to expedite the proceedings (this too as regulated before its reformulation under Article 1-*ter*, paragraph 2) was in fact deemed devoid of real power to expedite the trial, "[c]onsidering that, despite such a request, it may in any case continue and extend beyond the reasonable time limit, without failure to respect it being the sole responsibility of the applicant".

3.3.– However, the provision under consideration here differs from the previous ones (which refer to the above-mentioned motions for a hearing to be brought forward and to expedite proceedings), addressed in Judgments No. 34 and No. 169 of 2019. It does not make the admissibility of a claim for equitable compensation for unreasonable length of proceedings contingent on bringing a request for a measure declaring an interest already established during the proceedings and a mere "booking of a decision" – which is reduced to a purely formality – but to a claim for possible, and concrete, "alternative procedural models", with the purpose of accelerating the course of the proceedings before the maximum time limit is reached.

3.4.– In fact, the preventive remedy envisaged for the case in point, which the party seeking compensation did not invoke, consists of submitting an application to have the case decided at the end of the oral proceedings, as regulated by Article 281-*sexies* of the Code of Civil Procedure, which provides that the court may schedule oral proceedings at the conclusion of the closing arguments – either during the hearing itself or, upon a party's request, at a subsequent hearing – and may, at the conclusion, decide the case at the end of the oral discussion, with a reading of a statement containing a summary of the reasons for the decision. A request to adopt such a model is clearly much more than a formal act, seeking rather to make available a remedy of specific performance. This is because, unlike requests for an early ruling during an administrative proceeding and the acceleration of criminal proceedings, the case at hand does not involve a mere invitation to the judge to expedite the proceedings, but the concrete suggestion of sub-procedural models (falling within the framework of the decision-making procedures provided for in procedural law), teleologically functional to achieving this purpose, and effectively able to obtain an earlier hearing.

3.5.– In particular, Article 1-*ter*, paragraph 1, of Law No. 89 of 2001 identifies, among the preventive remedies available, an instrument relating to the discussion of the proceedings, whereby a request is submitted to commute the form of trial from ordinary to summary proceedings pursuant to Article 183-*bis* of the Italian Civil Code (a provision not applicable to the case in question), or an instrument concerning the manner in which the decision is to be reached, where (at least 6 months before the time limit for the reasonable length of proceedings) a request is submitted to settle the dispute according to the more flexible and condensed form of delivery of a simplified judgment immediately after the oral proceedings. Adopting this decision-making model makes it possible to decide the case at the outcome of the oral proceedings, with a reading of the judgment, thus avoiding the need to grant time limits for the exchange of final appearances and statements of reply within 60 and 20 days respectively of the closing arguments, with filing of the judgment within the subsequent 30 days: a judgment which, also in this case, must anyway contain a rationale that "permits [...] the facts of the case to be reconstructed, albeit in summary, and offers a solution to the

case under examination that is correct from a logical and legal point of view" (Court of Cassation, Third Civil Division, Judgment No. 12203 of 12 June 2015).

3.6.– The effectiveness of the change to the decision-making model does not, however, depend directly on the party's request, but on the assessment of whether or not it is appropriate to adopt it, in the specific case, which "[f]alls within the discretion of the judge on the merits" (Court of Cassation, Second Civil Division, Order No. 22094 of 4 September 2019).

What, therefore, the challenged legislation requires of the party to the proceeding under way is merely a collaborative attitude towards the bench, to which it expresses its wish to transition to the simplified procedure or the concise decisional model, in time to possibly avoid exceeding the reasonable time limit for the procedure itself. A subsequent action for compensation for excessive duration of the proceeding, should this occur in spite of any request to expedite them, remains admissible.

A possible reduction of legal protection, furthermore with regard only to the manner in which it is exercised, and not the quality of the contingent detailed examination, which the party may suffer as a result of the transition to the simplified procedure, reflects a legitimate option by the legislator within the framework of a balance of values of equal constitutional importance: namely, on the one hand, the right of defence (Article 24 of the Constitution) and, on the other, the value of due process (Article 111 of the Constitution), in terms of the reasonable duration of proceedings, which is hindered by the already abnormal amount of litigation (Judgment No. 157 of 2014), undeniably aggravated by the indiscriminate flow of proceedings for equitable compensation pursuant to Law No. 89 of 2001 (Judgment No. 135 of 2018).

Contrary to the assertion of the referring court, therefore, the sanction of inadmissibility under paragraph 1 of Article 2 of the "Pinto Law" is not, in this case, unreasonable or disproportionate, and serves to exhort the party to the proceeding to observe the burden of diligence predicated by paragraph 1 of Article 1-*ter*.

3.7.– In conclusion, in view of the accelerating effect of the decision that may result from them, the remedies introduced by the combined provisions of the challenged legislation with regard to civil proceedings, come directly under the category of "preventive remedies designed to avoid the duration of proceedings becoming excessive". In European case law, these remedies are considered not only admissible but "even preferable [...] possibly in combination with compensation" (Grand Chamber of the European Court of Human Rights, judgment of 29 March 2006, *Scordino v. Italy*). According to the Court of Strasbourg, in fact, when a legal system proves to be lacking in terms of the requirement arising from Article 6 ECHR regarding the reasonable length of court proceedings, a remedy that allows it to be accelerated in order to prevent undue protraction is the most effective solution. Such a remedy has an undeniable advantage over a purely compensatory one in that it makes it possible to expedite the decision of the court concerned; it avoids the need to ascertain whether a succession of infringements of the procedure itself have occurred, and it is not limited to acting after the fact as is the case with compensation (ECHR, *Olivieri and others v. Italy*, 25 February 2016).

3.8.– Hence, therefore, there is no conflict between the challenged provisions and the constitutional ones evoked.

ON THESE GROUNDS
THE CONSTITUTIONAL COURT

declares unfounded the question raised by the Court of Appeal of Naples, with the order mentioned in the headnote, as to the constitutionality of Articles 1-*bis*, paragraph 2, 1-*ter*, paragraph 1, and 2, paragraph 1, of Law No. 89 of 24 March 2001 (Provision of equitable reparation in the event of infringement of the reasonable time limit for trial and amendment of Article 375 of the Code of Civil Procedure), in relation to Articles 11 and 117(1) of the Constitution, in relation to Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950, ratified and implemented by Law No. 848 of 4 August 1955.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, 20 May 2020.

Signed by:
Marta CARTABIA, President
Mario Rosario MORELLI, Author of the Judgment