

## APPLICATION N° 19217/91

Adriana, Paola and Diamanda DURINI v/ITALY

DECISION of 12 January 1994 on the admissibility of the application

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**Article 8, paragraph 2 of the Convention:** *Even supposing that the obligation requiring the applicants to leave their home, bequeathed under the terms of a will to other members of their family, constitutes an interference with their right to respect for their home, that interference is necessary for the protection of the rights of others*

**Article 14 of the Convention:** *This provision only prohibits discrimination regarding enjoyment of the rights and freedoms guaranteed by the Convention.*

**Article 1 of the First Protocol:** *The right to live in a particular home which one does not own is not a possession within the meaning of this provision*

**Competence *ratione personae*:** *The Commission cannot entertain complaints against an individual. In this case, complaints concerning the contents of a will were directed against the testator and do not engage the responsibility of the State*

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### THE FACTS

The applicants, Adriana Durini and her daughters Diamanda and Paola, born in 1946, 1977 and 1980 respectively, are Italian nationals resident in Alzate Brianza (Como province).

They are represented for the proceedings before the Commission by Mr. Michele Catalano, a lawyer practising in Milan.

The facts, as submitted by the applicants, are as follows

In a will of 1 October 1918 Antonio Durini left the whole of his estate to a foundation of which his cousin, Paolina Durini, was to be the first president. She was to be succeeded as president by her eldest born male descendants or, failing such issue, by the eldest-born male descendants of one of her brothers. The family castle (Fabbrica Durini) was to be the home of each president of the foundation during his or her lifetime.

This will was contested in the courts. On 21 June 1937 the parties reached agreement on a settlement under the terms of which the right to live in the castle would pass from that time on to the eldest-born male descendant, whether or not that descendant presided over the foundation.

Under these rules the right to live in the castle devolved to Gian Giacomo Durini, the husband of Adriana and father of Paola and Diamanda. As Gian Giacomo had no sons, after his death on 7 January 1980 Teobaldo Durini succeeded to the right to live in the castle. On 24 June 1981 he brought an action in the Milan District Court against Adriana Durini seeking an order requiring her to vacate the premises.

In a judgment dated 8 January 1985, deposited with the registry on 16 July 1985, the court held that under the terms of the will Teobaldo Durini alone had the right to live in the castle. In response to the applicants' argument that the terms of the will were contrary to the principle of equality between the sexes, the court pointed out that succession was governed by the principle of contractual autonomy and that the principle of equality between the sexes was not guaranteed by the Constitution as regards financial relations between private individuals.

It accordingly ordered the applicants to vacate the premises.

The applicants appealed.

In its judgment of 5 May 1987, deposited with the registry on 7 July 1987, the Milan Court of Appeal upheld the first instance judgment.

The applicants appealed to the Court of Cassation. They maintained that Law No. 132 of 14 March 1985 ratifying the Convention on the Elimination of all Forms of Discrimination against Women and establishing the principle of equality between men and women was applicable to all relations, including financial relations, and argued that the will should therefore be declared void.

In a judgment of 2 October 1989, deposited with the registry on 11 April 1991, the Court of Cassation dismissed the appeal. It noted that under the 1985 law "any contract or other legally enforceable private instrument of whatever type purporting to limit the legal capacity of women [should] be deemed void." But the fact that the will

excluded the applicants from the succession did not affect their legal capacity, and the law relied on by the applicants was accordingly not applicable to their case

Furthermore, the Court of Cassation observed that younger male children were also excluded from the succession under the will, and that in the present case there was therefore no discrimination on the ground of sex

## COMPLAINTS

The applicants complain that the Italian courts upheld a will containing terms which provided for discrimination on the ground of sex, and allege that such terms were made unlawful in Italy by Law No 132 of 14 March 1985

They further complain of an infringement of their right to respect for their home and their private and family life

They rely on Articles 8 and 14 of the Convention and on Article 1 of Protocol No 1 to the Convention

In letters dated 22 and 29 September 1993 the applicants complained that the proceedings were not fair, in that the Italian courts omitted to apply Article 540 of the Italian Civil Code, which, it is submitted, gives the surviving spouse the right to continue to live in the family home

## THE LAW

The applicants allege that by upholding a will whose terms restricted the right of succession to the male line only, which obliged them, on the death of the first applicant's husband, the father of the other applicants, to leave the castle where they lived, the Italian courts breached the principle of non-discrimination between the sexes and infringed their rights under Article 8 of the Convention and Article 1 of Protocol No 1, taken separately and in conjunction with Article 14 of the Convention

The Commission notes that in this case the situation complained of by the applicants originated in the terms of a will which it is not for the State to alter, and whose lawfulness has been established by the Italian courts. These courts have held in particular, that the terms in question were not in breach of Law No 132 of 14 March 1985, under which any legal instrument purporting to restrict the legal capacity of women must be declared void, since exclusion of the applicants from the deceased's line of succession does not affect their legal capacity, as such, in any way

Consequently, the Commission considers that the applicants' complaints concern the content of the will and are directed in substance against the testator

However, the Commission recalls that under Article 25 of the Convention it can receive petitions from any person claiming to be the victim of a violation by the respondent State of a right guaranteed by the Convention, and may not entertain applications directed against a private individual. It follows that the application is incompatible *ratione personae* with the provisions of the Convention.

Moreover, the Commission considers that, even supposing it possible to derive from the Convention provisions relied on by the applicants the existence of a positive obligation on the part of the State to intervene in this area, the applicants' complaints are manifestly ill-founded.

In that connection the Commission notes in the first place that the right to live in the castle (which belongs to the foundation) is not a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention, so that this provision is not applicable to the case

Secondly, the Commission notes that the will reserved that right for the eldest-born male descendant. Accordingly, even supposing that obliging the applicants to leave the castle after the death of their husband and father amounted to interference with their right to respect for their home, such interference would be justified under paragraph 2 of Article 8 as being necessary for the protection of the rights and freedoms of others. Consequently, the complaint alleging a violation of Article 8 of the Convention is manifestly ill-founded.

Lastly, with regard to the question whether there has been discrimination contrary to the Convention, the Commission notes that it is on account of the testamentary provisions they criticise, including those alleged to effect discrimination on the ground of sex, that the applicants enjoyed, until the death of their husband and father, the advantages now in issue. It further notes that the discrimination concerns the right to live in the castle, and that that right as such is not one of the rights and freedoms set forth in the Convention. Consequently, Article 14 of the Convention is not applicable.

With regard to the complaints raised by the applicants in their letters of 29 September and 4 October 1993, concerning infringement of the right to a fair trial, as guaranteed by Article 6 of the Convention, the Commission notes that, even supposing the applicants have exhausted domestic remedies in substance on this question, their complaints are out of time for the purposes of Article 26 of the Convention, since they were raised more than six months after 11 April 1991, the date on which the judgment of the Italian Court of Cassation was deposited with the registry.

They must accordingly be rejected, pursuant to Article 27 para. 3 of the Convention.

For these reasons, the Commission, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE**