

## **APPLICATION N° 33604/96**

**Lucia ABOZZI and Giuseppina FABBRI v/ITALY**

**DECISION** of 16 April 1998 on the admissibility of the application

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**Article 26 of the Convention :** *For the purpose of calculating the date from which the six-month period runs, the final decision is the one against which no appeal lies and not the one given at the end of subsequent proceedings to set the first decision aside*

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### **THE FACTS**

The applicants, who were born in 1925 and 1943 respectively, are both Italian citizens. They live in Ferrara.

The applicants are represented before the Commission by Mr Dario Bolognesi, a lawyer practising in Bologna

The facts, as submitted by the applicants, may be summarised as follows.

The applicants are respectively the mother and sister of A.F. On 17 June 1991 A.F. was convicted of drug trafficking

On 29 June 1991 Ferrara Public Prosecutor's Office took proceedings against A.F. seeking application of the preventive measures established by Law no. 1423 of 27 December 1956 and Law no. 575 of 31 May 1965, as amended by Law no. 646 of 13 September 1982. The prosecution requested, among other things, that A.F. be made the subject of special supervision and compulsory residence orders and that his assets be confiscated

On 15 July 1991 Ferrara District Court ordered the seizure of A F's assets, on the grounds that he was a danger to society and that his official income did not appear sufficient for him to have acquired his assets lawfully

On 15 July 1991, and 11 March and 18 November 1992 Ferrara District Court ordered the seizure of certain assets belonging to the applicants which appeared to have been purchased with the proceeds from illegal activities

In a decision of 29 January 1993 Ferrara District Court ordered the confiscation of all the seized assets, except a passbook which was returned to the first applicant

The applicants appealed against that decision

In a decision of 3 December 1993, which was deposited with the registry on 27 June 1994 Bologna Court of Appeal dismissed the applicants' appeal. It held that the applicants had failed to prove that the assets in question had been purchased with lawfully acquired funds

The case file shows that the applicants' lawyer was notified that the decision had been deposited with the registry, but that the applicants were not

On an unspecified date the applicants' lawyer lodged an appeal with the Court of Cassation on points of law

In a decision of 23 January 1995 the Court of Cassation dismissed the appeal and ordered the applicants to pay costs. That decision had the effect of making the confiscation ordered on 29 January 1993 final

On 30 March 1995 the applicants were served with the costs order

On 18 April 1995 the applicants requested Ferrara District Court to stay execution of the confiscation order and to grant them leave to appeal on points of law to the Court of Cassation. They submitted that since Bologna Court of Appeal's decision had not been served on them, an appeal against it still lay to the Court of Cassation even though their lawyer had previously filed an appeal with that court

In a decision of 10 July 1995 Ferrara District Court dismissed the applicants' appeal, on the ground that they had already appealed - through their lawyer - to the Court of Cassation

The applicants appealed on points of law to the Court of Cassation

In a decision of 21 March 1996 the Court of Cassation dismissed the applicants appeal. It held that the applicants' right to appeal to it on points of law should be considered to have been absorbed by the appeal lodged by their lawyer.

## COMPLAINTS

1 The applicants submit that the decisions ordering the confiscation of their assets infringed their right to the peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1.

2 The applicants complain, invoking Article 6 of the Convention, that the proceedings were unfair, particularly having regard to the burden of proof on them.

## THE LAW

The applicants complain that their assets were confiscated and that the proceedings were unfair. They allege a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1.

Article 6 of the Convention provides:

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 1 of Protocol No. 1 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.

However, the Commission is not called upon to express an opinion as to whether the facts alleged by the applicant reveal the appearance of a violation of the above provisions. Under Article 26 of the Convention the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

The Commission considers that the final decision in the applicants' case was the one delivered by the Court of Cassation on 23 January 1995 at the end of proceedings in which the applicants had been represented by a lawyer freely chosen by them. Accordingly, the proceedings subsequently brought by the applicants to have set aside a decision which had become *res judicata* as a result of the Court of Cassation's decision cannot be taken into account in calculating the commencement date of the six-month period laid down in Article 26 of the Convention. That period therefore started to run on 23 January 1995, that is more than six months before the application was introduced.

It follows that the application is out of time and must be rejected in accordance with Articles 26 and 27 para. 3 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.