CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 68345/01
by Fabio CIUCCI
against Italy

The European Court of Human Rights (First Section), sitting on 18 March 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having regard to the above application lodged on 10 April 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Fabio Ciucci, is an Italian national who was born in 1966 and lives in Livorno. He was represented before the Court by Mr A. Carlesi, a lawyer practising in Livorno.

The respondent Government were represented by their successive Agents, respectively Mr U. Leanza and Mr I.M. Braguglia, and by their successive co-Agents, respectively Mr V. Esposito and Mr F. Crisafulli.

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant is the owner of a flat in Livorno, which he had let to I.M.

In a registered letter of 20 February 1990, the applicant informed the tenant that he intended to terminate the lease on expiry of the term on 1 September 1990 and asked him to vacate the premises by that date.

In a writ served on the tenant on 22 September 1990, the applicant reiterated his intention to terminate the lease and summoned the tenant to appear before the Livorno Magistrate.

By a decision of 8 October 1990, which was made enforceable on 11 October 1990, the Livorno Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 March 1992.

On 9 April 1992, the applicant served notice on the tenant requiring him to vacate the premises.

On 28 April 1992, the applicant made a statutory declaration that he urgently required the premises as accommodation for himself.

On 30 May 1992, he informed the tenant that the order for possession would be enforced by a bailiff on 23 June 1992.

Between 23 June 1992 and 29 November 2001, the bailiff made nineteen attempts to recover possession. Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

In the meanwhile, pursuant to Article 6 of Law No. 431 of 1998, on 15 July 1999, the tenant asked the Livorno Magistrate to postpone the enforcement proceedings. On 7 April 2000, the Livorno Magistrate set a fresh date for 24 November 2000.

On 9 July 2001, the tenant asked the Livorno Magistrate to postpone the enforcement proceedings.

On 20 July 2001, the Livorno Magistrate decided to provisionally suspend the enforcement and adjourned the hearing until 5 October 2001.

On 5 October 2001, the hearing was reported to 19 October 2001.

On 26 October 2001, the Livorno Magistrate ordered that the premises be vacated as soon as possible.

On 6 December 2001, the applicant recovered possession of the flat.

THE LAW

The applicant complains under Article 1 of Protocol No. 1 to the Convention that his inability to recover possession of his apartment amounted to a violation of the right to property.

The applicant further complains under Article 6 of the Convention about the duration of the eviction proceedings and about the denial of his right of access to a court.

In their observations, which the Registry received on 30 October 2002, the Government argued that the applicant had not exhausted domestic remedies. They maintained that since the Court of Cassation's judgment of

18 June 2002, which was lodged with the registry of that court on 26 July 2002, it was clear that a remedy under the Pinto Act was also available in respect of eviction proceedings, with the result that anyone considering himself a victim of a violation of Article 6 § 1 on account of the inordinate length of such proceedings could seek compensation from the relevant court of appeal. That applied to any complaint under Article 6 § 1. The Government submitted that the objection of a failure to exhaust domestic remedies also covered the complaint under Article 1 of Protocol No. 1, as the matter complained of was a consequence of the length of proceedings.

The applicant did not make any submission on this point.

The Court dismissed a similar objection in the *Mascolo* case, holding that the applicant was absolved from the obligation to exhaust domestic remedies in the special circumstances of that case (*Mascolo v. Italy* (dec.), no. 68792/01, 16 October 2003). The Court sees no reason to depart from that finding here and the Government's objection must, therefore, be dismissed.

The Government maintain that the measures in question amount to a control of the use of property which pursues the legitimate aim of avoiding the social tensions and troubles to public order that would occur if a considerable number of orders for possession were to be enforced simultaneously. In their opinion, the interference with the applicant's property rights was not disproportionate; therefore, there is no violation of Article 1 of Protocol No. 1.

As to the length of the enforcement proceedings, the Government submit that the delay in granting police assistance is justified on grounds of the order of priorities established according to public-safety requirements.

In any event, the Government stress that following the entry into force of Law no. 431 of 9 December 1998, the Prefect is no longer competent to determine the order of priority for the enforcement of the evictions. The date of enforcement should now be set by the District Court.

The Court considers that the application raises complex and serious issues which require a determination on the merits. It follows that it cannot be considered manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring the application inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President