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. 68008/01
by Stefania FRATESCHI
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 28 February 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, Mrs Stefania Frateschi, is an Italian national who was born in 1960 and lives in Florence. She was represented before the Court by Mr G. Fanfani, a lawyer practising in Florence.

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.

A.C., C.G. and G.G. were the owners of a flat in Florence, which they had let to R.F.

In a registered letter of 29 June 1987, the owners informed the tenant that they intended to terminate the lease on expiry of the term on 31 December 1987 and asked him to vacate the premises by that date.

In a writ served on the tenant on 9 September 1988, the owners reiterated their intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

By a decision of 18 October 1988, which was made enforceable on 23 November 1988, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 13 October 1989.

In the meanwhile, on 4 April 1989, the applicant became the owner of the flat and pursued the enforcement proceedings.

On 14 November 1989, the applicant served notice on the tenant requiring him to vacate the premises.

On 5 December 1989, she informed the tenant that the order for possession would be enforced by a bailiff on 26 January 1990.

Between 26 January 1990 and 22 January 1999, the bailiff made twenty 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.

On 17 May 1990, the applicant made a statutory declaration that she urgently required the premises as accommodation for herself.

On 11 October 2000, the applicant recovered possession of the flat.

THE LAW

The applicant complains under Article 1 of Protocol No. 1 to the Convention that her inability to recover possession of her flat 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.

The Government objected that the applicant had failed to exhaust domestic remedies as she had not sought judicial review in the administrative courts of the refusal to provide police assistance.

The applicant submitted that during the course of the proceedings the Administrative judge's competence had been limited to a review on points of law and that, therefore, the Prefect's decisions not to provide police was not open to judicial review on its merits.

The Court notes that it has previously had occasion to dismiss this preliminary objection in the *Immobiliare Saffi* case (*Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 40-42, ECHR 1999-V). It sees no reason to depart from that finding and therefore dismisses that objection.

In their observations, which the Registry received on 30 October 2002, the Government argued once more 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 share the Government's view that, because the complaint under Article 1 of Protocol No. 1 originated in the length of the proceedings, the Pinto Act would afford a remedy for it.

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