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. 68707/01
by Roberto, Rolando et Rodolfo GAMBERINI MONGENET
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 22 February 2001,

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

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Roberto Gamberini Mongenet, Mr Rolando Gamberini Mongenet and Mr Rodolfo Maria Gamberini Mongenet are three Italian nationals who were respectively born in 1938, 1943 and 1948 and live in Rome. They were represented before the Court by one of them, Mr R.M. Gamberini Mongenet, a lawyer practising in Rome.

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 applicants' father was the owner of a flat in Rome, which he had let to V.D.C.

In a writ served on the tenant on 24 January 1984, the applicants' father informed the tenant that he intended to terminate the lease on expiry of the term and summoned him to appear before the Rome Magistrate.

By a decision of 17 April 1984, which was made enforceable on 2 May 1984, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 16 April 1985.

On 2 May 1984, the applicants' father served notice on the tenant requiring him to vacate the premises.

On 3 April 1987, he informed the tenant that the order for possession would be enforced by a bailiff on 12 May 1987.

Between 12 May 1987 and 29 March 2001, the bailiff made forty-six attempts to recover possession. Each attempt proved unsuccessful, as the applicants' father was not entitled to police assistance in enforcing the order for possession.

In the meanwhile, on 14 February 1992, the applicants' father died and the applicants inherited the flat.

On 18 July 1998, they became party to the eviction proceedings as heirs.

On an unspecified date of April 2001, the applicants recovered possession of the flat with the assistance of the police.

THE LAW

The applicants complain under Article 1 of Protocol No. 1 to the Convention that their inability to recover possession of their flat amounted to a violation of the right to property.

The applicants further complain under Article 6 of the Convention about the duration of the eviction proceedings and about the denial of their right to access to a court.

The Government objected that the applicants had failed to exhaust domestic remedies as they had not lodged an application under Article 617 of the Code of Civil Procedure (“CCP”), which deals with incidents arising during enforcement, challenging the legitimacy of the bailiff's decisions to defer the eviction.

The applicants did not make any submission on this point.

The Court notes that although the applicants could have applied to the judge responsible for the execution of judgments challenging the bailiff's decisions had they been unlawful, in the instant case the bailiff had not acted unlawfully but could not enforce the eviction order without police assistance. Accordingly, since no objection could be lodged against a decision not to provide police assistance, the procedure under Article 617 cannot be regarded as an effective remedy. Furthermore, the Government have not cited any decisions of the Italian courts to show otherwise. The Government's objection must therefore be dismissed.

In their observations, which the Registry received on 30 October 2002, the Government argued once more that the applicants 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 applicants maintained that, at the time when they lodged their application, there existed no remedy under the Italian law.

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 applicants' 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