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. 69143/01
by Antonella and Fiorenzo MARGHERINI
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 6 March 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, Mrs Antonella Margherini and Mr Fiorenzo Margherini are two Italian nationals who were respectively born in 1957 and 1955 and live in Scandicci (Florence). They were represented before the Court by Mr A. Arena, 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.

E.M., the applicants' father, was the owner of a flat in Florence, which he had let to G.B.

In a registered letter of 10 October 1988, the applicants' father informed the tenant that he intended to terminate the lease on expiry of the term on 23 May 1989 and asked him to vacate the premises by that date.

The tenant told the owner that he would not leave the premises.

In the meanwhile, on 22 February 1989, the applicants' father died and the applicants inherited the flat.

In a writ served on the tenant on 12 December 1990, they reiterated their intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

By a decision of 12 February 1991, which was made enforceable on the same day, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 January 1992.

On 30 January 1992, the applicants served notice on the tenant requiring him to vacate the premises.

On 11 March 1992, they informed the tenant that the order for possession would be enforced by a bailiff on 24 April 1992.

On 4 April 1992, the applicants made a statutory declaration that they urgently required the premises as accommodation for themselves.

Between 24 April 1992 and 28 September 2000, the bailiff made fifteen attempts to recover possession. Each attempt proved unsuccessful, as the applicants were never granted the assistance of the police in enforcing the order for possession.

On 12 October 2000, the applicants recovered possession of the flat.

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.

In their observations, which the Registry received on 30 October 2002, the Government argued 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 the application was lodged, there existed no remedy under Italian law. Furthermore, they contended that this remedy was optional rather than compulsory since the term used in section 6 of the Act was "entitled" and not "must".

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