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. 67911/01
by Elena MOLTENI and Emanuele GHISI
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 23 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, Mrs Elena Molteni and Mr Emauele Ghisi are two Italian nationals who were respectively born in 1943 and 1972 and live in Milan. They were represented before the Court by Mr G. Candela and Mr D. Mallia, lawyers practising in Milan.

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 applicants, may be summarised as follows:

E.G., the first applicant's husband and the second applicant's father, was the owner of a flat in Milan, which he had let to R.M.

In a registered letter of 24 June 1985, the owner informed the tenant that he intended to terminate the lease on expiry of the term on 29 December 1985 and asked him to vacate the premises by that date.

In a writ served on the tenant on 23 October 1985, the owner reiterated his intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

By a decision of 5 December 1985, which was made enforceable on 14 December 1985, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 29 December 1986.

On 30 March 1987, the owner served notice on the tenant requiring him to vacate the premises.

On 17 April 1987, he informed the tenant that the order for possession would be enforced by a bailiff on 15 May 1987.

Between 15 May 1987 and 11 July 1996, the bailiff made thirty-one attempts to recover possession. Each attempt proved unsuccessful, as, the owner was not entitled to police assistance in enforcing the order for possession.

On 14 July 1996, the owner died and the applicants inherited the flat and became part of the proceedings as heirs.

Between 12 November 1996 and 30 November 1999, the bailiff made eleven attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

On 14 November 2000, the tenant died and 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.

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 1 of Protocol No. 1 to the Convention as a consequence of the length of proceedings could seek compensation from the relevant court of appeal.

The applicants pointed out that prior to the Court of Cassation's judgment, it was not clear whether the Pinto Act was applicable to eviction proceedings. In any event, the applicants maintained that there is no remedy under the Italian law with regards the violations of Article 1 of Protocol No. 1 to the Convention.

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.

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