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. 69834/01
by Giovanna SCIORTINO
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 March 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 Giovanna Sciortino, is an Italian national who was born in 1936 and lives in San Giovanni Lupatoto. She was represented before the Court by Mrs M.G. Atzeni, a lawyer practising in Cagliari.

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.

G.S., the applicant's father, was the owner of a flat in Cagliari which he had let to G.A.S.

In a registered letter of 3 June 1991, the applicant's father informed the tenant that he intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

In a writ served on the tenant on 24 February 1992, the applicant's father reiterated his intention to terminate the lease and summoned the tenant to appear before the Cagliari Magistrate.

By a decision of 23 March 1992, which was made enforceable on the same day, the Cagliari Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 28 June 1992.

On 20 July 1992, the applicant's father served notice on the tenant requiring him to vacate the premises.

On an unspecified date, the applicant's father made a statutory declaration that he urgently required the premises as accommodation for himself.

Subsequently, he informed the tenant that the order for possession would be enforced by a bailiff on 13 October 1992.

Between 13 October 1992 and 23 June 1995, the bailiff made five attempts to recover possession. Each attempt proved unsuccessful, as the applicant's father was never granted the assistance of the police in enforcing the order for possession.

On 25 May 1995, the applicant's father made a request for police assistance.

On 27 July 1995, the Cagliari Prefect informed him that the police assistance would be granted after 30 September 1996.

On 22 September 1997, the applicant's father died and his daughter, the actual applicant, inherited the flat and took part in the proceedings as an heir.

On 13 July 1998, the Prefect informed the bailiff that the police assistance would be granted only after 31 December 1998, as there was no urgent necessity, the applicant's father having died.

On 19 April 1999, the applicant served on the tenant the order to vacate the premises.

On 3 May 1999, she informed the tenant that the order for possession would be enforced by a bailiff on 25 May 1999.

On an unspecified day of May 2001, the tenant spontaneously vacated the premises and the applicant recovered possession of the flat.

THE LAW

The applicant complains under Article 6 of the Convention about the duration of the eviction proceedings.

The Court has also examined this complaint under Article 1 of Protocol No. 1 to the Convention.

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 Court notes that it has previously had occasion to dismiss this 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 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 applicant relied on the *tempus regit actum* principle to dispute the retroactive application of the Act and stressed that, in any event, she is not in a position to make use of this remedy, the deadline being over.

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 stress that the applicant acquired interest in the flat concerned as an heir only on September 1997 and 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 Court notes that, after the death of her father, the applicant inherited the flat in question and sought the enforcement of the eviction order as an heir.

In these circumstances, the Court does not share the Government's view and considers that the applicant can claim to be a victim within the meaning of Article 34 of the Convention with respect to the whole proceedings in question (see, *mutatis mutandis, L.Z. and two others v. Italy* (dec.), n. 40188/98, 22.06.2000; *Federici v. Italy* (dec.), n. 67917/01 and n. 68859/01, 13.02.2002).

Accordingly, 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