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. 68706/01
by Maddalena STORNELLI and Others
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 14 July 2000,

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 Maddalena Stornelli, Mrs Cecilia Sacchi, Mr Leonardo Sacchi and Mrs Francesca Sacchi are four Italian nationals who were respectively born in 1932, 1963, 1941 and 1940 and live in Florence. They were represented before the Court by Mrs R. Capitani, 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.

M.S. was the owner of a flat in Florence, which he had let to E.D.L. and after her death to her daughter S.L.D.B.

In a writ served on the tenant on 19 October 1989, M.S. informed the tenant that he intended to terminate the lease on expiry of the term on 31 December 1991 and asked her to vacate the premises by that date. He summoned the tenant to appear before the Florence Magistrate.

By a decision of 9 November 1989, which was made enforceable on 21 November 1989, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1992.

On 12 June 1993, M.S. died, his wife and children – the actual applicants – inherited the flat and became party to the proceedings as heirs.

On 14 December 1993, the applicants served notice on the tenant requiring her to vacate the premises.

On 18 January 1994, they informed the tenant that the order for possession would be enforced by a bailiff on 8 March 1994.

Between 8 March 1994 and 3 December 1998, the bailiff made nine attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

On 27 July 1999, pursuant to section 6 of Law no. 431/98, the tenant asked for a suspension of the eviction proceedings.

The eviction proceedings were suspended until 26 January 2001.

On 8 March 2001, the applicants served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 14 May 2001.

On that date, the bailiff made one attempt and discovered that the tenant had left the premises on 10 May 2001.

Consequently, 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 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 applicants relied on the *tempus regit actum* principle to dispute the retroactive application of the Act.

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