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. 68074/01
by Roberto and Paolo BROCCO
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 4 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, Mr Roberto Brocco, and Mr Paolo Brocco are two Italian nationals who were respectively born in 1963 and 1959 and live 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.

A.C., the applicants' mother, was the owner of a flat in Rome which she had let to A.F.

In a registered letter of 2 May 1987, A.C. informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1987 and asked her to vacate the premises by that date.

In a writ served on the tenant on 15 June 1987, A.C. reiterated her intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

By a decision of 30 November 1987, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1988.

On 2 October 1989, A.C. served notice on the tenant requiring her to vacate the premises.

On 30 October 1989, she informed the tenant that the order for possession would be enforced by a bailiff on 19 December 1989.

Between 19 December 1989 and 25 January 2000, the bailiff made forty-seven attempts to recover possession. Each attempt proved unsuccessful, as the applicant were not entitled to police assistance in enforcing the order for possession.

In the meanwhile, on 27 February 1996, A.C., the applicants' mother, died and the applicants inherited the flat.

On 28 March 1996, the applicants became party in the national proceedings as heirs.

On 14 February 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.

The Government objected that the applicants had failed to exhaust domestic remedies as they had not sought judicial review in the administrative courts of the refusal to provide police assistance or 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 submitted that during the course of the proceedings the administrative judge's competence had been limited to a review on points of law and that, therefore, the Prefect's decisions not to provide police was not open to judicial review on its merits.

The Court notes that it has previously had occasion to dismiss the first limb of the Government's 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.

The applicants maintained that Article 617 of the Code of Civil Procedure provided a remedy for the tenants and not for the owners.

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 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