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. 56717/00
by Stefano CAVICCHI and Others
against Italy

The European Court of Human Rights (First Section), sitting on 31 January 2002 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 3 December 1999 and registered on 19 April 2000,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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 are three Italian nationals, born respectively in 1962, 1932 and 1934 and living in Florence. They are represented before the Court by Mr F. Pietrini, a lawyer practising in Florence.

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicants are the owners of an apartment in Florence, which they had let to P.V.

In a registered letter of 25 July 1983, the applicants informed the tenant that they intended to terminate the lease on expiry of the term on 30 April 1984 and asked him to vacate the premises by that date.

In a writ served on the tenant on 24 April 1984, the applicants reiterated their intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

By a decision of 11 May 1984, which was made enforceable on 13 June 1984, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 11 May 1985.

The tenant asked the Florence Magistrate that the enforcement be postponed.

On 21 June 1985, the Florence Magistrate ordered that the premises be vacated by 30 April 1986.

On 5 June 1986, the applicants served notice on the tenant requiring him to vacate the premises.

On 23 June 1986, they served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 3 September 1986.

Between 3 September 1986 and 16 December 1998, the bailiff made thirty-five attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

On 12 July 1999, pursuant to article 6 of Law no. 431/98, the tenant asked the Florence District Court to suspend the eviction proceedings.

On 9 April 2001, the tenant died and his son refused to leave the apartment.

On 11 May 2001, the bailiff made one attempt to recover possession, which proved unsuccessful, as the applicants were never granted the assistance of the police in enforcing the order for possession. The next attempt was deferred to 16 October 2001.

On 3 July 2001, the applicants had not recovered possession of the apartment.

THE LAW

The applicants complain under Article 1 of Protocol No. 1 to the Convention that their inability to recover possession of their apartment 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 argue that the applicants have not exhausted domestic remedies on the grounds that he failed to challenge the refusal of police assistance before the administrative courts.

The Court recalls that it has already dismissed this objection in the Immobiliare Saffi case (see the judgment *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 40-42, ECHR 1999-V). The Court sees no reason to depart from its previous finding. This objection should therefore be rejected.

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 maintain that the delay in providing the assistance of the police is justified by the protection of the public interest. 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 applicants argue that the refusal of the administration to enforce the order issued by the magistrate has interfered with the power of the judiciary.

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.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President