CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 36268/97
by Pier Luigi CLUCHER and Others
against Italy

The European Court of Human Rights (Second Section), sitting on 4 October 2001 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr G. BONELLO,
Mr M. FISCHBACH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS,
Mr A. KOVLER, *judges*,
Mrs M. DEL TUFO, *ad hoc judge*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 1 August 1996 and registered on 28 May 1997,

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 Italian nationals living in Rome. They are represented before the Court by Mr B. Tempesta, a lawyer practising in Rome.

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

The applicants are the owners of an apartment in Rome, which they had let to G.S.

In a writ served on the tenant on 19 May 1984, the applicants communicated their intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

By a decision of 15 October 1984, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises must be vacated by 31 May 1987.

On 17 June 1987, the applicants served notice on the tenant requiring her to vacate the premises.

On 30 July 1987, they served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 14 September 1987.

Between 14 September 1987 and 29 February 2000, the bailiff made thirty attempts to recover possession.

Each attempt proved unsuccessful as, under the statutory provisions providing for the suspension or the staggering of evictions, the applicants were not entitled to police assistance in enforcing the order for possession.

On 6 October 2000, the applicants recovered possession of their 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 arrangements for staggering the police assistance were an administrative issue, entirely separate from and independent of the judicial process and therefore out of the scope of Article 6.

The Court recalls that it has already held that Article 6 of the Convention is applicable to the tenants' eviction proceedings (see the judgment *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 62-63, ECHR 1999-V). The Court sees no reason to depart from its previous finding. This objection should therefore be rejected.

On the merits, 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.

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