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. 31663/96
by Marzio GIAGNONI and Monica FINOTELLO
against Italy

The European Court of Human Rights (Second Section), sitting on 22 March 2001 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 12 December 1995 and registered on 30 May 1996,

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 born in 1952 and 1961 respectively and living in Prato. They are represented before the Court by Mr L. Curradi, a lawyer practising in Florence.

A. The circumstances of the case

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 M.P.

In a writ served on the tenant on 4 June 1985, the applicants communicated their intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

By a decision of 24 June 1985, which was made enforceable on 1 July 1985, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 August 1987.

On 29 September 1987, the applicants served notice on the tenant requiring him to vacate the premises.

On 21 October 1987, they served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 27 November 1987.

Between 27 November 1987 and 13 April 1989, the bailiff made 4 attempts to recover possession, on 27 November 1987, 18 March 1988, 21 October 1988 and 13 April 1989.

On 29 May 1989, the applicants made a statutory declaration that they urgently required the premises as accommodation for themselves.

Between 11 October 1989 and 13 February 1997, the bailiff made 19 attempts to recover possession, on 11 October 1989, 11 September 1990, 24 January 1991, 18 September 1991, 27 February 1992, 25 September 1992, 17 March 1993, 13 October 1993, 30 March 1994, 5 October 1994, 25 October 1994, 4 April 1995, 31 May 1995, 23 October 1995, 26 January 1996, 7 June 1996, 27 July 1996, 30 September 1996 and 13 February 1997.

Each attempt proved unsuccessful, as the applicants were never granted the assistance of the police in enforcing the order for possession.

On 29 April 1997, the applicants repossessed the premises with the assistance of the police.

B. Relevant domestic law

The relevant domestic law is described in the judgment *Immobiliare Saffi v. Italy* [GC], no. 22774/93, 28.7.99, §§ 18-35, ECHR-V.

COMPLAINTS

1. The applicants complain under Article 1 of Protocol No. 1 about their prolonged inability - through lack of police assistance - to recover possession of their apartment.

2. The applicants further complain under Article 6 § 1 of the Convention about the duration of the eviction proceedings.

THE LAW

The applicants complain that their inability to recover possession of their apartment amounted to a violation of Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The applicants further complain about the duration of the eviction proceedings. Article 6 of the Convention, insofar as relevant, provides as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The Government argue that the arrangements for staggering the police assistance were not part of the judicial process for enforcement of orders for possession, since police intervention was an administrative issue, entirely separate from and independent of the judicial process. That administrative phase can not be said to come within 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 *Immobiliare Saffi* judgment cited above, §§ 62-63). As the Government have not submitted any new argument in support of their objection, the Court sees no reason to depart from its previous finding. This exception should therefore also 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.

The applicants argue that the impossibility to repossess their apartment during 12 years from the issue of the order for possession amounts to a violation of their right under Article 1 of Protocol No. 1. They argue that in the Italian legal system tenants are overprotected. Despite the fact that they had made a statutory declaration that they urgently required the premises as accommodation for themselves, they could repossess the apartment only 12 years after the date set by the magistrate.

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