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. 55673/00
by Gerardo and Raffaele SAVARESE
against Italy

The European Court of Human Rights (First Section), sitting on 26 March 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 lodged on 29 February 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 are two Italian nationals, born in 1930 and 1932 and living respectively in Pagani (Salerno) and Rome. They are represented before the Court by Mr V. Savarese, a lawyer practising in Nocera Inferiore.

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

The applicants are the owners of an apartment in Pagani, which they had let to R.E.

In a writ served on the tenant on 24 December 1983, the applicants informed the tenant of their intention to terminate the lease and summoned him to appear before the Nocera Inferiore Magistrate.

By a decision of 12 April 1984, which was made enforceable on the same day, the Nocera Inferiore Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 July 1985.

On 13 September 1985, 21 January 1988 and 11 January 1990, the applicants served notice on the tenant requiring him to vacate the premises.

On 12 March 1990, they served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 6 April 1990.

Between 6 April 1990 and 25 June 1990 the bailiff made two attempts to recover possession. Each attempt proved unsuccessful as, under the statutory provisions providing for the suspension, the applicants were not entitled to police assistance in enforcing the order for possession.

On 9 September 1999, they served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 6 October 1999.

Between 6 October 1999 and 17 January 2000, the bailiff made three attempts to recover possession. Each attempt proved unsuccessful, as the applicants were never granted the assistance of the police in enforcing the order for possession.

On 17 January 2000, the applicants 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 they 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 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 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