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. 44968/98
by Ester AMATO DEL RE
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 A.B. BAKA,
Mr L. FERRARI BRAVO,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 10 June 1998 and registered on 15 December 1998,

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 applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is an Italian national, born in 1920 and living in Naples. She is represented before the Court by Mr L. Cirillo, a lawyer practising in Naples.

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

The applicant is the owner of an apartment in Naples, which she had let to P.S. and after his death to his spouse and his children.

In a writ served on the tenants on 22 October 1984, the applicant informed them of her intention to terminate the lease and summoned them to appear before the Naples Magistrate.

By a decision of 28 January 1985, which was made enforceable on 30 September 1987, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 4 May 1988

On 23 January 1990, the applicant served notice on the tenants requiring them to vacate the premises.

On 6 April 1990, she served notice on the tenants informing them that the order for possession would be enforced by a bailiff on 13 April 1990. Between 13 April 1990 and 14 April 1998, the bailiff made twenty-one attempts to recover possession.

Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

On 14 April 1998, the applicant recovered possession of the apartment.

THE LAW

The applicant complains under Article 1 of Protocol No. 1 to the Convention that her inability to recover possession of her apartment amounted to a violation of the right to property.

The applicant further complains 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 outside 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 applicant's 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.

The applicant argues 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