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. 38011/97
by Aniello APONTE
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 P. LORENZEN,
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 11 July 1997 and registered on 3 October 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 applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is an Italian national, born in 1939 and living in Sorrento. He is represented before the Court by Mr T. Anastasio, 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 Sorrento, which he had let to A.E. and F.C.

In a writ served on the tenants on 5 November 1983, the applicant communicated his intention to terminate the lease and summoned them to appear before the Naples Magistrate.

By a provisional decision of 23 November 1983, the Naples Magistrate upheld the validity of the notice to quit, ordered that the premises be vacated by 1 January 1986 and declined jurisdiction on account of the value of the case, indicating that the Naples District Court had jurisdiction to hear it.

On 16 January 1984, the applicant resumed the proceedings before the Naples District Court. In a judgment of 10 January 1986, the court declared that the lease was terminated as of 31 December 1985 and ordered that the premises must be vacated by 30 September 1986. The judgment was made enforceable on 18 January 1990.

On 23 January 1990, the applicant served notice on the tenants requiring them to vacate the premises. On 9 February 1990, he served notice on the tenants informing them that the order for possession would be enforced by a bailiff on 8 May 1990.

On 8 May 1990, the bailiff made an attempt to recover possession, which proved unsuccessful as, under the statutory provisions providing for the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

Thereafter, the applicant decided to suspend the eviction attempts, in order to avoid useless costs, given the lack of prospects of obtaining the assistance of the police.

On 30 November 1995, the applicant served again notice on the tenants requiring them to vacate the premises. On 18 December 1995, he served notice on the tenants informing them that the order for possession would be enforced by a bailiff on 6 February 1996.

The bailiff made three further attempts to recover possession in enforcing the order for possession, which attempts proved unsuccessful as, under the statutory provisions providing for the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

On 10 April 1997, the tenants vacated the premises.

THE LAW

The applicant complains under Article 1 of Protocol No. 1 to the Convention that his inability to recover possession of his 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