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. 45006/98
by Francesco Saverio CAPURSO
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 14 July 1998 and registered on 16 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 1945 and living in Milan.

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

In a letter of 28 June 1982, the former owner of the apartment informed R.S. (the tenant) that he intended to terminate the lease on expiry of the term on 31 December 1983 and asked him to vacate the premises by that date.

In a writ served on the tenant on 16 April 1984, the owner reiterated his intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

By a decision of 20 November 1984, which was made enforceable on the same date, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 10 September 1985.

The tenant asked the Milan Magistrate to postpone the enforcement proceedings. The Milan Magistrate set a fresh date for the end of August 1986.

On 29 January 1985, the applicant became the owner of the apartment and pursued the enforcement proceedings.

On 4 July 1986, the applicant served notice on the tenant requiring him to vacate the premises.

On 19 August 1986, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 24 September 1986.

Between 24 September 1986 and 22 October 1987, the bailiff made twelve attempts to recover possession.

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

On 24 March 1987, the applicant made a statutory declaration that he urgently required the premises as accommodation for himself.

The tenant asked the Milan Magistrate to set again a fresh date for the enforcement for 28 July 1988.

On 14 December 1988 and on 14 April 1989, the applicant served two notices on the tenant requiring him to vacate the premises.

On 4 May 1989, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 26 May 1989.

Between 26 May 1989 and 13 January 2000, the bailiff made forty-four attempts to recover possession.

On 13 January 2000, the applicant recovered possession of the apartment.

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 and that the delay in the enforcement of the order issued by the Magistrate resulted in a denial of his right of access to a court

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. 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 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