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. 66754/01
by Franca CARNASCIALE
against Italy

The European Court of Human Rights (First Section), sitting on 12 September 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 27 February 2001,

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 1948 and living in Florence. She is represented before the Court by Mr G. Vercellis, a lawyer practising in Florence.

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

T.P.N. was the owner of an apartment in Florence, which she had let to M.G.

In a registered letter of 20 June 1987, the owner informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1987 and asked him to vacate the premises by that date.

In a writ served on the tenant on 21 January 1988, the owner reiterated her intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

By a decision of 10 February 1988, which was made enforceable on 22 February 1988, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 10 February 1989.

On 19 May 1989, the owner served notice on the tenant requiring him to vacate the premises.

On 15 June 1989, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 13 July 1989.

On 20 November 1989, the applicant became the owner of the apartment.

Between 13 July 1989 and 1 September 2000, the bailiff made twenty 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 11 February 1991, the applicant made a statutory declaration that she urgently required the premises as accommodation for herself.

On 1 September 2000, 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 and about the denial of her right of access to a court.

The Government argue that the applicant has not exhausted domestic remedies on the grounds that she 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 applicant's 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 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