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.32541/96
by Pietro CELONA
against Italy

The European Court of Human Rights (Second Section), sitting on 22 March 2001 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 6 May 1996 and registered on 6 August 1996,

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 1946 and living in Florence. He is represented before the Court by Mr A. Arcangeli, a lawyer practising in Florence.

A. The circumstances of the case

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

G.L. and S.L. were the owners of an apartment in Florence, which they had let to C.R.

In a writ served on the tenant on 18 September 1984, they communicated their intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

By a decision of 3 December 1984, which was made enforceable on 5 July 1986, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 15 January 1988.

On 14 December 1988, the applicant became the owner of the apartment.

On 10 May 1990, the applicant served notice on the tenant requiring her to vacate the premises.

On 29 January 1991, he served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 1 July 1991.

On an unspecified date, the applicant made a statutory declaration that he urgently required the premises as accommodation for himself.

Between 1 July 1991 and 5 February 1999, the bailiff made 19 attempts to recover possession, on 1 July 1991, 10 December 1991, 22 September 1992, 21 June 1993, 11 April 1994, 29 September 1994, 13 January 1995, 30 June 1995, 12 January 1996, 16 September 1996, 17 December 1996, 23 May 1997, 12 June 1997, 18 September 1997, 28 October 1997, 31 March 1998, 30 June 1998, 5 October 1998 and 5 February 1999.

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

On 30 May 1999, the tenant vacated the premises.

B. Relevant domestic law

The relevant domestic law is described in the judgment *Immobiliare Saffi v. Italy* [GC], no. 22774/93, 28.7.99, §§ 18-35, ECHR-V.

COMPLAINTS

1. The applicant complains under Article 1 of Protocol No. 1 about his prolonged inability - through lack of police assistance - to recover possession of his apartment.

2. The applicant further complains under Article 6 § 1 of the Convention about the duration of the eviction proceedings.

THE LAW

The applicant complains that his inability to recover possession of his apartment amounted to a violation of Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The applicant further complains about the duration of the eviction proceedings. Article 6 of the Convention, insofar as relevant, provides as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The applicant argues that the impossibility to repossess his apartment during 12 years from the issue of the order for possession amounts to a violation of his right under Article 1 of Protocol No. 1. He argues that in the Italian legal system tenants are overprotected. Despite the fact that he had made a statutory declaration that he urgently required the premises as accommodation for himself, he could repossess the apartment only 12 years after the date set by the magistrate.

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