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. 38043/97
by Stefania CICCONE
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 G. BONELLO,
Mr M. FISCHBACH,
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 30 May 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 1965 and living in Rome. She is represented before the Court by Mr U. Flamini and Mr A. Ierardi, lawyers practising in Rome.

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

Mr E.B. was the owner of an apartment in Rome, which he had let to F.G.

In a writ served on the tenant on 24 July 1986, he communicated his intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

By a decision of 12 February 1987, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 November 1988.

On 9 March 1990, Mr E.B. served notice on the tenant requiring her to vacate the premises. On 23 May 1990, he served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 7 June 1990.

Between 7 June 1990 and 30 April 1991, the bailiff made ten attempts to recover possession.

On 14 May 1991, the applicant became the owner of the apartment.

Between 28 May 1991 and 16 November 1994, the bailiff made thirty-three attempts to recover possession.

On 1 December 1994, the applicant made a statutory declaration that she urgently required the premises as accommodation for herself.

Between 26 January 1995 and 7 May 1997, the bailiff made eleven 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 10 May 1997, the tenant vacated the premises.

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