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. 45356/99
by Lorenza CONTI
against Italy

The European Court of Human Rights (First Section), sitting on 24 January 2002 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 14 October 1998 and registered on 12 January 1999,

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 1966 and living in Florence.

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

The applicant is the owner of an apartment in Florence, which she had let to P.M.

In a registered letter of 30 March 1987, the applicant 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 3 February 1988, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

By a decision of 29 February 1988, which was made enforceable on the same day, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 1 March 1989.

On 5 April 1989, the applicant made a statutory declaration that she urgently required the premises as accommodation for herself.

On 15 April 1989, the applicant served notice on the tenant requiring him to vacate the premises.

On 8 May 1989 she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 7 June 1989.

Between 7 June 1989 and 9 June 1998 the bailiff made eighteen 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 30 June 1999 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.

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 *Immobiliare Saffi v. Italy* [GC], no. 22774/93, 28.7.99, §§ 62-63, ECHR-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 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