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. 42609/98
by Fabrizio FUSCO
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 L. FERRARI BRAVO,
Mr G. BONELLO,
Mr P. LORENZEN,
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 9 June 1998 and registered on 9 August 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 1961 and living in Caserta (Naples). He is represented before the Court by Mr G. Maccauro, a lawyer practising in Caserta.

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

The applicant is the owner of an apartment in Caivano (Naples), which he had let to A.I.

In a registered letter of 11 March 1987, the applicant informed the tenant that he intended to terminate the lease on expiry of the term on 31 December 1987 and asked her to vacate the premises by that date.

In a writ served on the tenant on 16 January 1988, the applicant reiterated his intention to terminate the lease and summoned the tenant to appear before the Afragola (Naples) Magistrate.

By a decision of 22 March 1989, which was made enforceable on 5 April 1990, the Afragola Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 5 July 1990.

On 15 March 1990, the applicant served notice on the tenant requiring her to vacate the premises.

On 27 April 1993 she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 18 May 1993.

On 15 July 1993, the applicant made a statutory declaration that he urgently required the premises as accommodation for himself.

Between 15 May 1993 and 1 December 1998, 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 7 April 2001, 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 (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