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. 43580/98
by G.G.
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 14 September 1998 and registered on 24 eptember 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 1940 and living in La Spezia. He is represented before the Court by Mr C. Defilippi, a lawyer practising in La Spezia.

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

The applicant is the owner of an apartment in La Spezia, which he had let to B.L.

In a registered letter of 21 February 1992, the applicant informed the tenant that he intended to terminate the lease on expiry of the term on 31 August 1992 and asked him to vacate the premises by that date.

On 31 August 1992, he served a notice to quit on the tenant, but he refused to leave.

In a writ served on the tenant on 22 February 1993, the applicant informed the tenant of his intention to terminate the lease and summoned him to appear before the La Spezia Magistrate.

By a decision of 4 March 1993, which was made enforceable on the same day, the La Spezia Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1993.

On 14 January 1994, the applicant served notice on the tenant requiring him to vacate the premises.

On 16 February 1994, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 8 March 1994.

On 30 May 1994, the applicant made a statutory declaration that he urgently required the premises as accommodation for his mother.

Between 8 March 1994 and 14 May 1998, the bailiff made three 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 27 September 1996, the applicant asked the La Spezia Magistrate for police assistance in enforcing the order for possession. The La Spezia Magistrate rejected the request.

On 13 February 1998 and on 4 May 1998, the applicant served two notices to quit on the tenant, informing him that the order for possession would be enforced with the assistance of the police.

On 14 May 1998, 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.

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.

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