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. 41610/98
by L.M.
against Italy

The European Court of Human Rights (Second Section), sitting on 13 September 2001 as a Chamber composed of

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

Having regard to the above application introduced with the European Commission of Human Rights on 12 March 1998 and registered on 10 June 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 Matera. She is represented before the Court by Mr F. Cefalà, a lawyer practising in Milan.

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

The applicant is the owner of an apartment in Milan, which she had let to D.D'A.M.

In a registered letter of 3 October 1984, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1985 and asked her to vacate the premises by that date.

On 23 October 1985, she served a notice to quit on the tenant and summoned her to appear before the Milan Magistrate.

By a decision of 16 October 1986, which was made enforceable on 19 November 1986, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 June 1988.

On 30 June 1988 and on 2 May 1989, the applicant served notice on the tenant requiring her to vacate the premises.

On 1 June 1989, she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 27 June 1989.

Between 27 June 1989 and 25 November 1997, the bailiff made thirty-one attempts to recover possession. Each attempt proved unsuccessful, as, under the statutory provisions providing for the suspension for the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

On 27 December 1997, the applicant recovered possession of the apartment, because the tenant spontaneously 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.

The Government maintain that 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