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. 40537/98
by M.T.
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 11 March 1998 and registered on 31 March 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 1946 and living in Turin. She is represented before the Court by Mrs E. Filipello, a lawyer practising in Turin.

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

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

In a registered letter of 12 May 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 19 June 1987, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Turin Magistrate.

The tenant opposed alleging that the lease expired on 30 June 1991.

By a decision of 30 March 1988, the Turin Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 June 1992.

On 4 September 1992, the applicant served notice on the tenant requiring him to vacate the premises.

On 1 October 1992, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 6 November 1992.

Between 6 November 1992 and 23 April 1997, the bailiff made seven attempts to recover possession. On an unspecified day in October 1997, the applicant recovered possession of the apartment because 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 applicant has not exhausted domestic remedies on the grounds that she failed to challenge the refusal of police assistance before the administrative courts.

The Court recalls that it has already dismissed this objection in the Immobiliare Saffi case (see the judgment *Immobiliare Saffi v. Italy* [GC],

no. 22774/93, §§ 40-42, ECHR 1999-V). The Court sees no reason to depart from its previous finding. This objection should therefore be rejected.

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* judgment cited above, §§ 62-63). 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