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. 42343/98
by Maria MALESCIA
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 6 April 1998 and registered on 22 July 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 1938 and living in Milan.

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

Stelios company was the owner of an apartment in Milan which it had let to E.T.

In a registered letter sent in December 1990, Stelios informed the tenant that it intended to terminate the lease on expiry of the term on 29 September 1992 and asked him to vacate the premises by that date.

In a writ served on the tenant on 19 March 1991, Stelios reiterated its intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

By a decision of 4 April 1991, which was made enforceable on 30 June 1993, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by the same date.

On 15 December 1992, the applicant became the owner of the apartment and pursued the enforcement proceedings.

On 15 November 1993, the applicant served notice on the tenant requiring him to vacate the premises.

On 25 January 1994, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 11 February 1994.

In a registered letter of 13 March 1995, the applicant proposed negotiations to the tenant in order to settle their dispute, but they failed.

Between 11 February 1994 and 15 March 1999, the bailiff made seventeen attempts to recover possession.

Each attempt proved unsuccessful, as, under the statutory provisions providing for the suspension or the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

On 14 December 1999, the enforcement of the order for possession was suspended pursuant Section 6 of Law no.431/98 and set for 12 May 2000.

On 9 May 2000 and 13 June 2000, the bailiff made two attempts to recover possession.

Later in June 2000, 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 that the delay in the enforcement of the order issued by the Magistrate resulted in a denial of her 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 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. 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