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. 37008/97
by Roberto PANNOCCHIA
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 A.B. BAKA,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS,
Mr A. KOVLER, *judges*,
Mrs M. DEL TUFO, *ad hoc judge*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 28 February 1997 and registered on 23 July 1997,

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 1925 and living in Livorno. He is represented before the Court by Mrs L. Pannocchia, a lawyer practising in Livorno.

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

The applicant is the owner of an apartment in Livorno, which he had let to A.R.

In a writ served on the tenant on 16 September 1991, the applicant communicated his intention to terminate the lease and summoned the tenant to appear before the Livorno Magistrate.

By a decision of 19 October 1991, which was made enforceable on 17 March 1993, the Livorno Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 14 October 1992.

On 23 March 1993, the applicant served notice on the tenant requiring him to vacate the premises.

On 6 May 1993, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 8 June 1993.

Between 8 June 1993 and 26 June 2000, the bailiff made ten 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.

In the meantime, on 27 January 1994, the applicant made a statutory declaration that he urgently required the premises as accommodation for his daughter

Pursuant to Section 6 of Law no. 431/1998, the enforcement proceedings were suspended.

According to the applicant’s information, the enforcement proceedings are still pending.

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 out of 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.

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 applicant argues that the delay in the enforcement of the order issued by the Milan Magistrate resulted in a denial of his right of access to a 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