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. 31109/96
by Maurizio RIBOLI
against Italy

The European Court of Human Rights (Second Section) sitting on 28 October 1999 as a Chamber composed of

Mr C. Rozakis, *President*,
Mr M. Fischbach,
Mr B. Conforti,
Mr P. Lorenzen,
Mrs M. Tsatsa-Nikolovska,
Mr A.B. Baka,
Mr E. Levits, *judges*,

and Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 31 October 1995 by Maurizio Riboli against Italy and registered on 22 April 1996 under file no. 31109/96;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

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THE FACTS

The applicant is an Italian national, born in 1964 and living in Milan.

He is represented before the Court by Mr Daniele Portinaro, a lawyer practising in Milan.

A. Particular circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

O.I. s.r.l., a company based in Milan, was the owner of an apartment in Milan, which it had let to C.M. In a registered letter of 11 March 1993, it informed the tenant that it intended to terminate the lease on expiry of the term on 30 September 1993 and asked her to vacate the premises by that date. In a writ served on the tenant on 5 June 1993, it reiterated its intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

In a decision of 16 June 1993, which was made enforceable on 17 June 1993, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises must be vacated by 30 September 1994.

On 31 May 1994, the applicant became the owner of the apartment.

On 13 October 1994, the applicant served notice on the tenant requiring her to vacate the premises.

On 17 November 1994, he served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 16 December 1994.

On 16 February 1995, the applicant made a statutory declaration that he urgently required the premises as accommodation for himself.

Between 16 December 1994 and 27 February 1996 the bailiff made 6 attempts to recover possession, on 16 December 1994, 28 February 1995, 19 May 1995, 22 September 1995, 15 December 1995 and 27 February 1996. These attempts proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

On an unspecified date between 27 February 1996 and 15 May 1996, the applicant repossessed the apartment.

B. Relevant domestic law

The relevant domestic law is described in the Immobiliare Saffi v. Italy judgment of 28 July 1999, to be published in the Court's official reports, §§ 18-35.

COMPLAINTS

1. The applicant complains about his prolonged inability - through lack of police assistance - to recover possession of his apartment.

2. The applicant further complains about the duration of the eviction proceedings.

THE LAW

1. The applicant complains that the impossibility for him to recover possession of his apartment infringed his rights under Article 1 of Protocol no. 1 to the Convention, according to which:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The applicant complains in particular that, on account of the impossibility of evicting the tenant, he was prevented from moving out from his family's apartment.

The Court considers that the interference complained of amounted to control of the use of property within the meaning of the second paragraph of Article 1, and pursued a legitimate aim in the general interest, as required by that provision (see the Immobiliare Saffi judgment, cited above, §§ 46 and 48, and the Scollo v. Italy judgment of 28 September 1995, Series A n° 315-C, p. 26, §§ 30-31).

The Court recalls that an interference must strike a "fair balance" between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, and therefore also in its second paragraph. There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question. In spheres such as housing, which plays a central role in the welfare and economic policies of modern societies, the Court will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see the Immobiliare Saffi judgment cited above, § 49).

The Court considers that, in principle, the Italian system of staggering of the enforcement of court orders is not in itself open to criticism, having regard in particular to the margin of appreciation permitted under the second paragraph of Article 1. However, such a system carries with it the risk of imposing on landlords an excessive burden in terms of their ability to dispose of their property and must accordingly provide certain procedural

safeguards so as to ensure that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable (see, *mutatis mutandis*, the Immobiliare Saffi judgment cited above, § 54).

The Court must thus ascertain whether, in the instant case, a balance was maintained between the relevant interests (see the Scollo v. Italy judgment cited above, § 37).

The Court observes that, when the applicant acquired title over the property on 31 May 1994, he was certainly aware that it was occupied by a recalcitrant tenant and that the eviction order would only be enforceable as of 30 September 1994. After making on 16 February 1995 the statutory declaration that he urgently needed to recover possession of the apartment, the applicant had to wait approximately one year before he could repossess the apartment.

The Court notes that, under the applicable provisions, the applicant was entitled to be granted police assistance with priority, but not immediately. The Court does not find that the restriction on the applicant's use of his flat, which restriction lasted one and a half years in all, imposed on him an individual and excessive burden, contrary to the requirements of the second paragraph of Article 1 of Protocol No. 1 (see, *a contrario,* the Scollo judgment, cited above, § 40).

In these circumstances, the Court concludes that this complaint is manifestly ill-founded within the meaning of Article 35 §§ 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

2. The applicant further complains that the length of the enforcement proceedings was excessive and in breach of Article 6 § 1 of the Convention, whose pertinent part reads as follows:

> "In the determination of his civil rights and obligations … everyone is entitled to a … hearing within a reasonable time by a … tribunal"

The Court considers that this complaint should be examined in connection with the more general right to a court (see the Immobiliare Saffi judgment cited above, § 61).

The right to a court as guaranteed by Article 6 also protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party (see, *mutatis mutandis*, the Hornsby v. Greece judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40). Accordingly, the execution of a judicial decision cannot be unduly delayed. However, a stay of execution of a judicial decision for such period as is strictly necessary to enable a satisfactory solution to be found to public-order problems may be justified in exceptional circumstances (see the Immobiliare Saffi judgment cited above, § 69).

In the present case, the Court notes that, insofar as the applicant is concerned, the eviction was only delayed of approximately one and a half years. Having in mind the public order problems which Italy admittedly has had to face in the field of housing, the Court does not consider that this delay was so long as to deprive the order for possession issued by the Milan Magistrate on 16 June 1993 of all useful effect or of undermining its substance (see, *a contrario*, the Immobiliare Saffi judgment cited above, § 73).

Further, the Court considers, bearing in mind the practical difficulties raised by the enforcement of a very large number of evictions, that the length of the proceedings at issue was not unreasonably long (see*, a contrario*, the Scollo judgment cited above, § 44 *in fine*).

It follows that this complaint is also inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Christos Rozakis
President