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. 32385/96
by Onorato RICCI
against Italy

The European Court of Human Rights (Second Section), sitting on 22 March 2001 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
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 13 February 1996 and registered on 23 July 1996,

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 1916 and living in Viareggio. He is represented before the Court by Mr M. Taglioli, a lawyer practising in Viareggio.

A. The circumstances of the case

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

The applicant is the owner of two apartments in Camaiore, which he had let to V.D.B. and S.C. respectively.

1) The proceedings against V.D.B.

In a writ served on the tenant on 10 October 1990, the applicant communicated his intention to terminate the lease and summoned the tenant to appear before the Lucca Magistrate.

By a decision of 18 October 1990, the Lucca Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1992. That decision was made enforceable on 21 January 1993.

On 3 February 1993, the applicant served notice on the tenant requiring him to vacate the premises.

On 24 February 1993, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 20 October 1993.

On 30 June 1993, the applicant made a statutory declaration that he urgently required the premises as accommodation for himself.

Between 20 October 1993 and 23 May 1996, the bailiff made 13 attempts to recover possession, on 20 October 1993, 25 January 1994, 21 April 1994, 20 June 1994, 19 October 1994, 20 January 1995, 23 March 1995, 31 May 1995, 5 October 1995, 11 December 1995, 25 January 1996, 20 March 1996 and 23 May 1996.

Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

In December 1996, the tenant vacated the premises.

2) The proceedings against S.C.

In a writ served on the tenant on 10 October 1990, the applicant communicated his intention to terminate the lease and summoned the tenant to appear before the Lucca Magistrate.

By a decision of 18 October 1990, the Lucca Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1992. That decision was made enforceable on 21 January 1993.

On 3 February 1993, the applicant served notice on the tenant requiring him to vacate the premises.

On 24 February 1993, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 20 October 1993.

On 30 June 1993, the applicant made a statutory declaration that he urgently required the premises as accommodation for his daughter.

Between 20 October 1993 and 13 January 1997, the bailiff made 17 attempts to recover possession, on 20 October 1993, 25 January 1994, 21 April 1994, 20 June 1994, 19 October 1994, 20 January 1995, 23 March 1995, 31 May 1995, 5 October 1995, 11 December 1995, 25 January 1996, 20 March 1996, 23 May 1996, 16 July 1996, 23 October 1996, 13 December 1996 and 13 January 1997.

Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

In February 1997, the tenant vacated the premises.

B. Relevant domestic law

The relevant domestic law is described in the judgment *Immobiliare Saffi v. Italy* [GC], no. 22774/93, 28.7.99, §§ 18-35, ECHR-V.

COMPLAINTS

1. The applicant complains under Article 1 of Protocol No. 1 about his prolonged inability - through lack of police assistance - to recover possession of his apartments.

2. The applicant further complains under Article 6 § 1 of the Convention about the duration of the eviction proceedings.

THE LAW

The applicant complains that his inability to recover possession of his apartments amounted to a violation of Article 1 of Protocol No. 1, which provides:

> "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 further complains about the duration of the eviction proceedings. Article 6 of the Convention, insofar as relevant, provides 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 applicant argues that the impossibility to repossess his apartments respectively during 3 years and 11 months for the first apartment and 4 years for the second, from the issue of the order for possession, amounts to a violation of his right under Article 1 of Protocol No. 1. He argues that in the Italian legal system tenants are overprotected. Despite the fact that he had made a statutory declaration that he urgently required the premises as accommodation respectively for himself and for his daughter, he could repossess the apartments respectively only 3 years and 11 months and 4 years after the date set by the magistrate.

The Government point out that there is no breach of Article 1 of Protocol No. 1, as the interference with the applicant right to peaceful enjoyment of his property is consistent with the relevant legislation.

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 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