CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 56924/00
by Maria SCALERA
against Italy

The European Court of Human Rights (First Section), sitting on 14 March 2002 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application lodged on 22 February 2000,

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 1917 and living in Rome. She is represented before the Court by Mr A. Pivanti, a lawyer practising in Rome.

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

The applicant is the owner of four apartments in Rome, which she had let to P.C., G.F. and R.R., E.T. and S.A..

1) Proceedings against P.C. and then his widow M.L.

In a writ served on the tenant on 19 November 1990, the applicant informed him of her intention to terminate the lease on expiry of the term on 31 December 1991 and summoned him to appear before the Rome Magistrate.

By a decision of 3 May 1991, which was made enforceable on 15 May 1991, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1992.

On 1 February 1993, the applicant served notice on the tenant requiring him to vacate the premises.

On 17 February 1993, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 7 April 1993.

Between 7 April 1993 and 18 November 1999, the bailiff made twenty-three attempts to recover possession.

Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

On 15 December 1999, the applicant recovered possession of the apartment.

2) Proceedings against G.F. and R.R.

In a registered letter of 14 September 1989, the applicant informed the tenants that she intended to terminate the lease on expiry of the term on 30 April 1990 and asked them to vacate the premises by that date.

In a writ served on the tenants on 19 November 1990, the applicant reiterated her intention to terminate the lease and summoned them to appear before the Rome Magistrate.

By a decision of 3 May 1991, which was made enforceable on 17 May 1991, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 3 May 1992.

On 19 October 1992, the applicant served notice on the tenants requiring them to vacate the premises.

On 18 December 1992, she served notice on the tenants informing them that the order for possession would be enforced by a bailiff on 8 January 1993.

Between 8 January 1993 and 6 October 1999, the bailiff made twenty-four attempts to recover possession.

Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

On 10 January 2000, the applicant recovered possession of the apartment.

3) Proceedings against E.T.

In a writ served on the tenant on 19 November 1990, the applicant informed him of her intention to terminate the lease on expiry of the term on 31 December 1991 and summoned him to appear before the Rome Magistrate.

By a decision of 3 May 1991, which was made enforceable on 15 May 1991, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1992.

On 1 February 1993, the applicant served notice on the tenant requiring him to vacate the premises.

On 17 February 1993, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 7 April 1993.

Between 7 April 1993 and 24 November 2000, the bailiff made thirty-two attempts to recover possession.

Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

On 15 December 2000, the applicant recovered possession of the apartment.

4) Proceedings against S.A. and then his widow M.B.

In a writ served on the tenant on 20 July 1990, the applicant informed the tenant of her intention to terminate the lease on expiry of the term on 30 June 1991 and summoned him to appear before the Rome Magistrate.

By a decision of 17 January 1991, which was made enforceable on 15 April 1991, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 April 1992.

On 19 October 1992, the applicant served notice on the tenant requiring him to vacate the premises.

On 19 December 1992, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 8 January 1993.

Between 8 January 1993 and 6 October 1999, the bailiff made twenty-five attempts to recover possession.

Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

On 4 February 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 apartments 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 and about the denial of her right of access to a court.

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 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; therefore, there is no violation of Article 1 of Protocol No. 1.

As to the length of the enforcement proceedings, the Government submit that the delay in granting police assistance is justified on grounds of the order of priorities established according to public-safety requirements. 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