CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 40465/98
by Anna Maria SORRENTINO PROTA
against Italy

The European Court of Human Rights (Second Section), sitting on 11 October 2001 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr G. BONELLO,
Mr M. FISCHBACH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS,
Mr V. ZAGREBELSKY, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 20 August 1997 and registered on 26 March 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 deliberated, decides as follows:

THE FACTS

The applicant is an Italian national, born in 1953 and living in Positano (Salerno). She is represented before the Court by Mr F. Manzo, a lawyer practising in Torre Annunziata (Naples).

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

The applicant is the owner of a building of sixteen apartments in Castellammare di Stabia (Naples), ten of which were let to ten different tenants.

1. The proceedings against I.A.

In a registered letter of 24 May 1991, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

In a writ served on the tenant on 14 May 1992, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

By a decision of 20 May 1992, which was made enforceable on 27 May 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 20 May 1993.

On 11 September 1995, the applicant served notice on the tenant requiring him to vacate the premises.

On 23 October 1995, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 4 November 1995.

Between 4 November 1995 and 3 December 1998, the bailiff made seven attempts to recover possession.

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

On an unspecified date of 1999, the applicant recovered possession of the apartment.

2. The proceedings against V.C.

In a registered letter of 24 June 1991, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

In a writ served on the tenant on 17 April 1992, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

By a decision of 22 June 1992, which was made enforceable on 17 July 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 22 June 1993.

On 11 September 1995, the applicant served notice on the tenant requiring him to vacate the premises.

On 23 October 1995, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 4 November 1995.

Between 4 November 1995 and 28 October 1997, the bailiff made five attempts to recover possession.

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

Following the entry into force of Law 431/98, the enforcement of the evictions proceedings was suspended until 31 January 2000.

In April 2000, the tenant entered into a new lease.

3. The proceedings against S.E.

In a writ served on the tenant on 11 May 1992, the applicant informed the tenant of her intention to terminate the lease on expiry of the term on 8 December 1992 and summoned him to appear before the Naples Magistrate.

By a decision of 20 May 1992, which was made enforceable on 25 September 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 20 May 1993.

On 11 September 1995, the applicant served notice on the tenant requiring him to vacate the premises.

On 23 October 1995, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 4 November 1995.

Between 4 November 1995 and 25 November 1999, the bailiff made twelve attempts to recover possession.

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

On 24 March 2000, the applicant recovered possession of the apartment.

4. The proceedings against I.R.

In a registered letter of 24 May 1991, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

In a writ served on the tenant on 7 May 1992, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

By a decision of 20 May 1992, which was made enforceable on 27 May 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 20 May 1993.

On 1 October 1992, I.R. died, F.E. succeeded in the lease.

On 23 October 1995, the applicant served notice on the tenant requiring him to vacate the premises.

On 10 October 1995, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 2 December 1995.

Between 2 December 1995 and 27 October 1997, the bailiff made five attempts to recover possession.

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

Following the entry into force of Law 431/98, the enforcement of the evictions proceedings was suspended until 31 January 2000.

On 24 March 2000, the applicant recovered possession of the apartment.

5. The proceedings against F.D., A.M. and G.R.

In a registered letter of 24 May 1991, the applicant informed the tenants that she intended to terminate the lease on expiry of the term on 8 February 1992 and asked them to vacate the premises by that date.

In a writ served on the tenants on 8 May 1992, the applicant reiterated her intention to terminate the lease and summoned the tenants to appear before the Naples Magistrate.

By a decision of 20 May 1992, which was made enforceable on 27 May 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 20 March 1993.

On 23 October 1995, the applicant served notice on the tenants requiring them to vacate the premises.

On 10 November 1995, she served notice on the tenants informing them that the order for possession would be enforced by a bailiff on 2 December 1995.

Between 2 December 1995 and 28 October 1997, the bailiff made five attempts to recover possession.

Each attempt proved unsuccessful as, the applicant was not entitled to police assistance in enforcing the order for possession. Following the entry into force of Law 431/98, the enforcement of the evictions proceedings was suspended until 31 January 2000.

On 17 March 2000, the applicant recovered possession of the apartment.

6. The proceedings against F.B

In a registered letter of 20 June 1991, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

In a writ served on the tenant on 8 June 1992, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

By a decision of 1 July 1992, which was made enforceable on 25 September 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1994.

On 11 September 1995, the applicant served notice on the tenant requiring him to vacate the premises.

On 11 October 1995, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 9 November 1995.

Between 9 November 1995 and 23 January 1997, the bailiff made four attempts to recover possession.

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

In June 1997, the tenant spontaneously vacated the premises and the applicant recovered possession of the apartment.

7. The proceedings against G.I.

In a registered letter of 14 June 1991, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 November 1991 and asked him to vacate the premises by that date.

In a writ served on the tenant on 15 April 1992, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

By a decision of 22 June 1992, which was made enforceable on 25 September 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 4 June 1995.

On 11 September 1995, the applicant served notice on the tenant requiring him to vacate the premises.

On 23 October 1995, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 4 November 1995.

Between 4 November 1995 and 23 January 1997, the bailiff made four attempts to recover possession.

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

In July 1997, the tenant entered into a new lease.

8. The proceedings against L.C.

In a registered letter of 24 May 1991, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

In a writ served on the tenant on 15 April 1992, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

By a decision of 22 June 1992, which was made enforceable on 15 July 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 22 June 1993.

On 11 September 1995, the applicant served notice on the tenant requiring him to vacate the premises.

On 23 October 1995, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 4 November 1995.

Between 4 November 1995 and 23 January 1997, the bailiff made four attempts to recover possession.

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

In June 1997, the tenant entered into a new lease.

9. The proceedings against E.A.

In a registered letter of 24 May 1991, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

In a writ served on the tenant on 4 May 1992, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

By a decision of 11 May 1992, which was made enforceable on 20 May 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 11 May 1993.

On 12 September 1995, the applicant served notice on the tenant requiring him to vacate the premises.

On 23 October 1995, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 4 November 1995.

Between 4 November 1995 and 23 January 1997, the bailiff made four attempts to recover possession.

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

In April 1997, the tenant vacated spontaneously the premises and the applicant recovered possession of the apartment

10. The proceedings against B.A.

In a registered letter of 24 June 1991, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

In a writ served on the tenant on 17 April 1992, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

By a decision of 22 June 1992, which was made enforceable on 15 July 1992, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 22 June 1993.

On 11 September 1995, the applicant served notice on the tenant requiring him to vacate the premises.

On 23 October 1995, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 4 November 1995.

Between 4 November 1995 and 23 January 1997, the bailiff made four attempts to recover possession.

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

In September 1997, the tenant entered into a new lease.

Relevant domestic law

The relevant domestic law is described in the judgement *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 1 about her prolonged inability – through lack of police assistance – to recover possession of her 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 about her prolonged inability – through lack of police assistance – to recover possession of her ten apartments. She further complains about the duration of the relevant eviction proceedings.

1. As regards the proceedings concerning tenants F.B., G.I., L.C., E.A. and B.A. (listed under nos. 6 to 10 above), the Court notes that under the applicable provisions, the applicant was entitled to be granted police assistance with priority, but not immediately.

The applicant thus had to wait approximately two years and six months. The Court notes that all the proceedings are concluded and the tenants were not in arrears**.**

The Court does not find that the restriction on the applicant's use of her apartments imposed on her an individual and excessive burden, contrary to the requirements of the second paragraph of Article 1 of Protocol No. 1 (see the Spadea and Scalabrino v. Italy judgment of 28 September 1995, Series A n° 315-C, § 40).

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

As regards the complaint about the length of the enforcement proceedings the Court notes that the eviction was delayed for approximately two years and six months.

Having in mind the public order problems which Italy admittedly has had to face in the field of housing and in the light of the necessity of protecting the tenant's interests, the Court does not consider that this delay was so long as to deprive the order for possession issued by the Magistrate of all useful

effect or of undermining its substance (see 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 as well as of the need to protect the tenants' interests, that the length of the proceedings at issue was not unreasonably long (see*, a contrario*, the Scollo v. Italy jugdment of 28 September 1995, Series A, no. 35, § 44 *in fine*).

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

2. As regards the proceedings concerning tenants I.A., V.C., S.E., I.R. and F.D. (listed under nos. 1 to 5), the Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 3 of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the application in so far as it concerns the proceedings listed under nos. 1 to 5;

Declares inadmissible the remainder of the application.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President