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. 37248/97
by Elda VIETTI
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 G. BONELLO,
Mr M. FISCHBACH,
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 2 April 1997 and registered on 4 August 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, living in Milan. She is represented before the Court by Mr G.M. Junginger, a lawyer practising in Milan.

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

The applicant is the owner of an apartment in Milan, which she had let to E.P.

In a writ served on the tenant on 9 June 1987, the applicant communicated her intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

By a decision of 18 June 1987, which was made enforceable on 29 June 1987, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 29 June 1989.

On 16 May 1989 and again on 1 October 1990 the applicant served notice on the tenant requiring her to vacate the premises.

On 6 November 1990, she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 23 November 1990.

Between 23 November 1990 and 15 July 1999, the bailiff made thirty attempts to recover possession. Each attempt proved unsuccessful as, under the statutory provisions providing for the suspension or the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

Pursuant to Section 6 of Law no. 431/98, the enforcement proceedings were suspended.

In July 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 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 applicant has not exhausted domestic remedies on the grounds that she failed to challenge the refusal of police assistance before the administrative courts.

The applicant contests the Government’s arguments arguing that the prefectoral committee never adopted a formal decision refusing police assistance.

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 argue that the arrangements for staggering the police assistance were an administrative issue, entirely separate from and independent of the judicial process and therefore outside 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 *Immobiliare Saffi* judgment cited above, §§ 62-63). 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 refusal of the administration to enforce the order issued by the magistrate has interfered with the power of the judiciary.

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