



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

SECOND SECTION

CASE OF A.O. v. ITALY

(Application no. 22534/93)

JUDGMENT

STRASBOURG

30 May 2000

FINAL

04/10/2000

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of A.O. v. Italy,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr C. L. ROZAKIS, *President*,
Mr A. B. BAKA,
Mr B. CONFORTI,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS, *Judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 11 May 2000,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application against Italy lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 by the applicant Mr A.O. (“the applicant”), an Italian national, on 25 May 1993. The application was registered on 26 August 1993 under file No. 22534/93. Before the Court the applicant acted by himself. The Italian Government (“the Government”) were represented by their Agent, Mr Umberto Leanza, and by their coagent, M. Vitaliano Esposito.

2. The applicant complained under Article 1 of Protocol No. 1 about his prolonged impossibility to recover possession of his apartment through lack of police assistance.

3. On 11 January 1995, the Commission (First Chamber) decided to give notice of the application to the respondent Government and invited them to submit their observations on its admissibility and merits. The Government submitted their observations on 17 March 1995 and 15 April 1996, to which the applicant replied on 12 May 1995.

4. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 2 thereof, the application was transferred to the Court.

5. In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the case to the Second Section. The Chamber constituted within the Section included ex officio Mr B. Conforti, the judge elected in respect of Italy (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court), and Mr C. L. Rozakis, the President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr M. Fischbach, Mr P. Lorenzen,

Mrs M. Tsatsa-Nikolovska, Mr A. Baka and Mr E. Levits (Rule 26 § 1 (b)). Mr. M. Fischbach was replaced by Mr. G. Bonello, Substitute Judge.

6. On 7 October 1999, the Court declared the application admissible.

7. On 9 December 1999, the Government submitted additional observations.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. In 1969, the applicant let at a low rent, pursuant to a 1969 law on rent control (*equo canone*), an apartment he owned in Rome.

9. On 10 October 1986 the applicant served a notice to quit (*disdetta*) on the tenant on expiry of the term on 31 December 1987, but she refused to leave.

10. In a writ served on the tenant on 28 November 1986, the applicant reiterated his intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate (*pretore*).

11. In a decision of 10 April 1987, which was made enforceable on the same day, the magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 September 1988.

12. On an unspecified date the applicant served notice (*precetto*) on the tenant requiring her to vacate the premises. He subsequently served notice on the tenant informing her that the order for possession would be enforced by a bailiff (*significazione di sfratto*).

13. Between 28 November 1989 and 29 March 1991, the bailiff made nine attempts to recover possession. Each attempt proved unsuccessful as, under the statutory provisions providing for the suspension or staggering of the evictions, the applicant was not entitled to police assistance. The competent prefect, in fact, had to give priority in the grant of police assistance to any pending urgent cases.

Thereafter, the applicant decided not to pursue the enforcement proceedings, in order to avoid useless costs, given the lack of prospects of obtaining the assistance of the police. He resumed the proceedings on a later, unspecified date.

14. On 15 November 1995 the bailiff evicted the tenant. In the report on the eviction, the bailiff noted that the tenant, who was elderly and sick, had been lying in bed for two years; she had to be transferred by ambulance to a council flat which was allocated to her by the Municipality of Rome on the same day.

15. The applicant thus recovered possession of his flat.

II. RELEVANT DOMESTIC LAW

16. 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.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

17. The Government maintained that the applicant had not exhausted domestic remedies, in that he had failed to issue proceedings in the administrative courts challenging the refusal of police assistance.

18. The Court recalls that it has already dismissed this same objection in the *Immobiliare Saffi* case (see the *Immobiliare Saffi* judgment cited above, §§ 40-42). To the extent that the Government have not submitted any new argument in support of their objection, the Court sees no reason to depart from its previous finding.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

19. The applicant complained about his prolonged impossibility of recovering possession of his apartment, owing to the implementation of emergency legislative provisions on residential property leases. He alleged a violation of Article 1 of Protocol No. 1 to the Convention, 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.”

A. The applicable rule

20. Relying on its previous case-law, the Court considers that the interference with the applicant's property rights amounted to control of the use of property and falls to be examined under the second paragraph of Article 1 (see the *Immobiliare Saffi* judgment cited above, § 46).

B. Compliance with the conditions in the second paragraph

1. Aim of the interference

21. The Court has previously expressed the view that the impugned legislation had a legitimate aim in the general interest, as required by the second paragraph of Article 1 (see the Immobiliare Saffi judgment cited above, § 48).

2. Proportionality of the interference

22. The Court reiterates that an interference under the second paragraph of Article 1 of Protocol No. 1, must strike a “fair balance” between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. 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 and the Chassagnou and Others v. France judgment of 29 April 1999, § 75, to be published in the Court's official reports).

23. The applicant contended that the interference at issue was disproportionate in view of its length and of the financial burden resulting from the impossibility of raising the rent.

24. The Government pointed out that the only ground for eviction in the present case had been the expiration of the lease, which did not warrant the applicant's being given any priority in the provision of police assistance. The interference with the applicant's right to the peaceful enjoyment of his property was therefore consistent with the relevant legislation. The Government concluded that the burden imposed on the applicant had not been excessive.

25. 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).

26. The Court must thus ascertain whether, in the instant case, the applicant was afforded sufficient guarantees as to be safeguarded against uncertainty and arbitrariness. The Court will also examine whether the tenant deserved any special protection, i.e. whether the latter's interests could be considered as prevailing over those of the applicant (see, *mutatis mutandis*, the Spadea and Scalabrino v. Italy of 28 September 1995, Series A no. 315-B, p. 27, § 38).

27. The Court observes that the applicant obtained an order for possession on 10 April 1987, which was enforceable as of 30 September 1988 (see paragraph 11 above). Between 28 November 1989 and 29 March 1991, the bailiff's attempts to recover possession proved unsuccessful, on account initially of the legislation that suspended enforcement of non-urgent possession orders and successively of the legislation providing for the staggering of the evictions (see paragraph 13 above). Thereafter, until 15 November 1995, the applicant decided to avoid further bailiff's attempts which, if not assisted by the police, were bound to be ineffective (see paragraph 13 above *in fine*). He then resumed the proceedings and recovered possession on 15 November 1995 (see paragraphs 14-15 above).

28. For approximately six years, the applicant was thus left in a state of uncertainty as to when he would be able to repossess his apartment. He could not apply to either the judge dealing with the enforcement proceedings or the administrative court, which would not have been able to set aside the prefect's decision to give priority to any pending urgent cases, as that decision was an entirely legitimate one (see the Immobiliare Saffi judgment cited above, § 56). Likewise, the applicant had no prospects of obtaining compensation through the Italian courts for his protracted wait.

29. It is true that the tenant was elderly and sick and therefore deserved special protection. Even assuming that this was the reason for not granting the applicant police assistance, the Court is of the opinion that this circumstance could not in itself justify the lengthy restriction of the applicant's use of his apartment. Indeed, on the very same day of the eviction the authorities managed to allocate to the tenant a subsidised apartment: the Court has not been provided with any information as to why this could not be done earlier, nor as to whether the authorities made any efforts at all to allocate to her such an apartment prior to the date of the eviction.

30. In the light of the foregoing, the Court considers that, in the particular circumstances of this case, an excessive burden was imposed on the applicant and accordingly the balance that must be struck between the protection of the right of property and the requirements of the general interest was upset to the applicant's detriment.

Consequently, there has been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage and legal expenses

32. The applicant sought reparation for the pecuniary damage he had sustained, which resulted from the loss of rent (approximately 800,000 Italian lire (ITL) per month) and the legal costs, which he put at 6,789,823 ITL. He also claimed reparation for the moral damage, stressing that he suffered brain and heart damage, but left it to the Court's discretion to assess the amount.

In respect of the pecuniary damage, the Government considered that the applicant should only be awarded the damage which he incurred on account of the delay in the reinstatement which can be considered to have caused a “disproportionate” interference with his property rights, and not on account of the whole delay. Further, the Government argued that the applicant had failed to prove the market value of the rent of the apartment and that, even if he had recovered possession of the apartment, he could not have increased the rent, on account of the law on rent freezes (Law no. 392 of 27 July 1978).

As regards the alleged non-pecuniary damage, the Government submitted that a finding of a violation would in itself constitute sufficient just satisfaction. In particular, they maintained that there was no causal link between the health damage and the alleged violation.

Lastly, the Government maintained that only part of the legal costs, namely only those relating to the part of the proceedings which exceeded a reasonable time, were to be reimbursed.

33. As regards pecuniary damage, the Court does not find the Government's argument convincing, given that that the applicant could have entered into alternative types of lease, and thus considers that the applicant must be awarded compensation for the pecuniary damage resulting from the loss of rent (see the *Immobiliare Saffi* judgment, cited above, § 79). It finds the applicant's basis for calculation reasonable and therefore considers it appropriate to award the sum of 50,000,000 ITL under this head.

In so far as the legal costs are concerned, the Court decides to award the amount claimed in full (see the *Scollo v. Italy* judgment of 28 September 1995, Series A no. 315-C, p. 56, § 50 and the *Immobiliare Saffi* judgment, cited above, § 79).

The Court further decides to award 6,000,000 ITL for non-pecuniary damage.

B. Default interest

34. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 2,5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final under Article 44 § 2 of the Convention, the following amounts:
 - (i) 50,000,000 (fifty million) ITL for pecuniary damage;
 - (ii) 6,000,000 (six million) ITL for non pecuniary damage;
 - (iii) 6,789,823 (six million seven hundred eighty nine thousand eight hundred twenty three) ITL for legal costs.
 - (b) that simple interest at an annual rate of 2,5% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 30 May 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President