



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

FIRST SECTION

CASE OF CILIBERTI v. ITALY

(Application no. 30879/96)

JUDGMENT

STRASBOURG

15 November 2002

FINAL

15/02/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ciliberti v. Italy,

The European Court of Human Rights (First Section), sitting 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, *judges*,

Mr G. RAIMONDI, *ad hoc judge*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 24 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 30879/96) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mr Raffaele Ciliberti (“the applicant”), on 6 March 1996.

2. The applicant was represented by Mr A. Orpello, a lawyer practising in Naples. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their co-Agent, Mr V. Esposito.

3. The applicant complained under Article 1 of Protocol No. 1 that he had been unable to recover possession of his flat within a reasonable time. Invoking Article 6 § 1 of the Convention, he further complained about the length of the eviction proceedings.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr V. Zagrebelsky, the judge elected in respect of Italy, withdrew from sitting in the case (Rule 28). The Government appointed Mr G. Raimondi as *ad hoc* judge to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 2).

6. On 22 June 2000 the Court declared the application admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is the owner of an apartment in Torre del Greco, which he had let to A.P.

9. In a writ served on the tenant on 24 October 1990, the applicant informed the tenant of his intention to terminate the lease on expiry of the term on 31 December 1991 and summoned him to appear before the Naples Magistrate.

10. By a decision of 30 November 1990, which was made enforceable on the same day, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1992.

11. On 11 March 1993, the applicant made a statutory declaration that he urgently required the premises as accommodation for his daughter.

12. On 19 March 1993, the applicant served notice on the tenant requiring him to vacate the premises.

13. On 7 April 1993, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 26 April 1993.

14. Between 26 April 1993 and 16 January 1997, the bailiff made nine attempts to recover possession. Each attempt of the bailiff proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

15. On 28 April 1997, the tenant vacated the premises.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law is described in the Court's judgment in the case of *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 18-35, ECHR 1999-V.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

17. The applicant complained that he had been unable to recover possession of his flat within a reasonable time owing to the lack of police assistance. 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

18. In accordance with its case-law, the Court considers that the interference with the applicant’s right to peaceful enjoyment of his possessions amounted to control of the use of property and falls to be examined under the second paragraph of Article 1 (see *Immobiliare Saffi*, cited above, § 46).

B. Compliance with the conditions in the second paragraph

1. *Aim of the interference*

19. 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 *Immobiliare Saffi*, cited above, § 48).

2. *Proportionality of the interference*

20. The Court reiterates that for the purposes of the second paragraph of Article 1 of Protocol No. 1 an interference 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 judgement as to what is in the general interest unless that judgement is manifestly without reasonable foundation (see *Immobiliare Saffi*, cited above, § 49).

21. The applicant contended that the interference was disproportionate in view of its length and of the financial burden that resulted from not being able to increase the rent. The interference had caused particular hardship in his case, as he had made a statutory declaration that he urgently required the premises as accommodation for his daughter.

22. The Government pointed out that the interference with the applicant's right to the peaceful enjoyment of his property was proportionate to the legitimate aim pursued. They concluded that, taking into consideration the interests of both the landlord and the tenant, the burden imposed on the applicant had not been excessive.

23. The Court considers that, in principle, the Italian system of staggering 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*, *Immobiliare Saffi*, cited above, § 54). The Court must thus ascertain whether, in the instant case, the applicant was afforded sufficient guarantees as to be safeguarded against uncertainty and arbitrariness.

24. The Court observes that the applicant obtained an order for possession, which became enforceable on 30 November 1990, indicating that the tenant should quit the flat on 31 December 1992. The first attempt by a bailiff to enforce the order for possession took place on 26 April 1993. On account partly of the legislation providing for the staggering of evictions and partly of the lack of police assistance, the applicant only recovered possession of his flat in 28 April 1997, even though he had made a statutory declaration on 11 March 1993 confirming that he urgently needed the flat as accommodation for his daughter. Indeed, the applicant was only able to regain possession because of a voluntary surrender by the tenant.

25. For approximately four years starting from the first attempt of the bailiff to enforce the order for possession, the applicant was thus left in a

state of uncertainty as to when he would be able to repossess his flat. The relevant authorities do not seem to have taken any action whatsoever in response to the statutory declaration by the applicant on 11 March 1993 that he needed the premises as accommodation for his daughter.

26. 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; 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.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicant also alleged a breach of Article 6 § 1 of the Convention, the relevant part of which provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

28. The applicant complained that he had had to wait for approximately six years to recover possession of his flat after the magistrate's order was issued. Furthermore, he argued that despite the fact that he had made a statutory declaration that he urgently required the premises as accommodation for his daughter, he had had to wait approximately four years from the date the declaration was made before recovering possession.

29. The Government contested this point. As to the length of the enforcement proceedings, the Government maintained that the delay in providing the assistance of the police is justified by the protection of the public interest.

30. The Court observes that the applicant had originally relied on Article 6 in connection with the complaint regarding the length of the proceedings for possession. The Court nonetheless considers that the instant case must be examined in connection with the more general right to a court.

31. The Court reiterates that the right to a court as guaranteed by Article 6 also protects the implementation of final, binding judicial decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party (see *Immobiliare Saffi*, cited above, § 66). Accordingly, the execution of a judicial decision cannot be unduly delayed.

32. In the instant case, the applicant obtained an order for possession on 30 November 1990, which became enforceable on the same day. Even after he had made the statutory declaration, the applicant was not granted police assistance. Indeed, the applicant recovered his flat only four years after the first attempt of the bailiff.

33. The Court considers that a delay of that length in the execution of a final court decision deprives Article 6 § 1 of the Convention of any practical effect.

34. In these circumstances, the Court holds that there has been a violation of the right to a court, as guaranteed by Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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. Pecuniary damage

36. The applicant sought reparation for the pecuniary damage he had sustained, which he put at 16,000,000 Italian lire (ITL) [8,263.31 euros (EUR)], being the difference between the effective rent paid by the tenant (ITL 300,000; EUR 154.94) and the average rental table (ITL 550,000; EUR 284.05) for the period from 31 December 1991 (the date of the term of expiration of the lease) to 28 April 1997 (the date when the applicant recovered his flat) plus legal interests. On this matter, the applicant produced an extra-judicial expert opinion. Furthermore, without giving any figures, the applicant also made reference to legal costs and expenses incurred in national proceedings against the tenant related to the effective use of the flat made by the latter. In any case, the applicant left the matter to be assessed by the Court in an equitable manner.

37. The Government contested the period calculated by the applicant.

38. The Court considers that the applicant must be awarded compensation for the pecuniary damage resulting from the loss of rent (see *Immobiliare Saffi*, cited above, § 79) on the basis of the reimbursement of the difference between the global amount of the rent he could have endorsed and the rents he effectively collected. Having regard to the means of calculation proposed by the applicant, the Court, in the light of the evidence before it and the period concerned, decides to award him on an equitable basis EUR 1,500 under this head and rejects the other claims.

The Court also awards under the head of pecuniary damage compensation for the costs relating to the enforcement proceedings (see below § 44) in the amount of EUR 1,500.

B. Non-pecuniary damage

39. The applicant claimed ITL 12,000,000 [EUR 6.197,48] for non-pecuniary damage. However, he left the matter to be assessed by the Court in an equitable manner.

40. The Government stressed that the applicant had failed to adduce evidence of any non-pecuniary damage sustained.

41. The Court considers that the applicant must have sustained some non-pecuniary damage. Therefore, the Court decides, on an equitable basis, to award EUR 4,000 under this head.

C. Costs and expenses

42. The applicant sought reimbursement of his legal costs. The applicant claimed a lump sum of ITL 10,000,000 [EUR 5.164,57] for his costs and expenses before the national courts together with costs and expenses before the Court.

43. The Government left the matter to the discretion of the Court.

44. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see the case *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V). As regards the costs of the enforcement proceedings, the Court considers that only the costs relating to the delay in the eviction must be reimbursed and, accordingly, decides to award the applicant the sum of EUR 1,500 under this head. This amount should however, in accordance with the Court's practice, be awarded under the head of pecuniary damage (see § 38 above).

As regards the costs and expenses incurred by the applicant before the Court, the Court considers it reasonable to award him EUR 2,000.

D. Default interest

45. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
2. *Holds* that there has been a violation of Article 6 § 1 of 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 according to Article 44 § 2 of the Convention, the following amounts:
 - (i) 3,000 EUR (three thousand euros) for pecuniary damage;
 - (ii) 4,000 EUR (four thousand euros) for non-pecuniary damage;
 - (iii) 2,000 EUR (two thousand euros) for legal costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President