



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

FIRST SECTION

CASE OF T.C.U. v. ITALY

(Application no. 31223/96)

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 T.C.U. v. Italy,

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

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mrs E. STEINER, *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. 31223/96) 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, Mrs T.C.U. (“the applicant”), on 14 November 1995.

2. The applicant was represented by Mr D. Portinaro, a lawyer practising in Milan. 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 she had been unable to recover possession of her flat within a reasonable time. Invoking Article 6 § 1 of the Convention, she 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 25 May 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 a flat in Milan, which she had let to L.D.Z.

9. In a registered letter of 6 June 1984, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 29 December 1984 and asked her to vacate the premises by that date.

10. On 11 February 1985, she served a notice to quit on the tenant, but she refused to leave.

11. In a writ served on the tenant on 19 February 1985, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

12. By a decision of 27 February 1985, which was made enforceable on 14 March 1985, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 27 February 1986.

13. On 23 January 1986, the applicant served notice on the tenant requiring her to vacate the premises.

14. On 7 March 1986, she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 18 April 1986.

15. Between 18 April 1986 and 18 June 1992 the bailiff made 23 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.

16. 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.

17. On 13 April 1996 the applicant repossessed the flat, which the tenant vacated in pursuance of an agreement reached with the applicant.

II. RELEVANT DOMESTIC LAW

18. 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

19. The applicant complained that she had been unable to recover possession of her flat within a reasonable time owing to the lack of police assistance. She 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. In accordance with its case-law, the Court considers that the interference with the applicant’s right to peaceful enjoyment of her 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*

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

2. *Proportionality of the interference*

22. 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).

23. The applicant contended that the interference was disproportionate in view of its length. Indeed, she had only recovered possession because she had managed to obtain the tenant's agreement, not because she had police assistance.

24. The Government maintained that the present case was indistinguishable from the case of *Spadea and Scalabrino v. Italy* (see the judgment of 28 September 1995, Series A no. 315-B), in which the Court held that there had been no violation of Article 1 of Protocol No. 1. The interference with the applicant's right to the peaceful enjoyment of her 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 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.

26. The Court observes that the applicant obtained an order for possession on 27 February 1985 which became enforceable on 14 March 1985 indicating that the tenant should quit the flat on 27 February 1986. The first attempt by the bailiff to enforce the order for possession took place on 18 April 1986. Between 18 April 1986 and 18 June 1992 the bailiff's attempts to recover possession proved unsuccessful because, without police assistance, the bailiff's attempts were doomed to failure. The applicant then recovered possession of the flat on 13 April 1996.

27. For approximately ten 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 she would be able to repossess her flat.

28. 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

29. 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...”

30. The applicant complained that she had had to wait approximately ten years to recover possession of her flat after the magistrate's order was issued.

31. The Government contested this point. 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.

32. 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.

33. 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.

34. In the instant case, the applicant obtained an order for possession on 27 February 1985 which became enforceable on 14 March 1985. The applicant recovered possession on 13 April 1996 only because she had managed to obtain the tenant's agreement. Indeed, the applicant recovered her flat approximately ten years after the first attempt of the bailiff.

35. 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.

36. 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

37. 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

38. The applicant sought reparation for the pecuniary damage she had sustained, which she put at 70,000,000 Italian lire (ITL) [36,151.98 euros (EUR)], being the loss of rent for the period while she had let the flat to L.D.Z. The applicant maintained that she lost profits for, at least, ITL 50,000,000 [EUR 25,822.84] because for approximately ten years the tenant paid a rent of ITL 7,264,000 [EUR 3,751.54] per year, while the value of the rent fixed by the Chamber of Commerce, was of ITL 12,000,000 [EUR 6,197.48]. Therefore, the applicant stressed that she lost ITL 5,000,000 [EUR 2,582.28] per year.

Furthermore, the applicant claimed ITL 5,000,000 [EUR 2,582.28], being the sum that she had to pay to the tenant in order to obtain its agreement.

Besides, the applicant claimed ITL 14,464,374 [EUR 7,470.23], being the unpaid service charges for the years 1993/1994 and 1994/1995.

Finally, the applicant claimed, without giving any figures, compensation for loss of rent with respect to the higher rent she could have received, had she been able to rent the flat to another tenant.

39. The Government stressed that the applicant had failed to adduce evidence of any pecuniary damage sustained as a result of the alleged violation.

40. 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 she could have endorsed and the rents she 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 her on an equitable basis EUR 19,500 under this head.

As regards the applicant's claim for ITL 5,000,000 [EUR 2,582.28], relating to what she had to pay to reach the agreement with the tenant, the Court notes that the applicant produced a cheque in the order of the tenant. However, the Court notes that the cheque has no date and considers that the applicant failed to submit any relevant document, such as a statement of account, as evidence of the payment or of the relationship between that payment and the return of the flat. Therefore, the Court rejects the applicant's claim.

As regards the unpaid service charges, the Court considers that since the applicant is entitled to recover them from the tenant no award should be made under this head and rejects the applicant's claim.

The Court also awards under this head compensation for the costs of the enforcement proceedings (see below § 46) in the amount of EUR 2,200.

B. Non-pecuniary damage

41. The applicant claimed non-pecuniary damage but left the matter to be assessed by the Court in an equitable manner.

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

43. The Court considers that the applicant must have sustained some non-pecuniary damage. Therefore, the Court decides, on an equitable basis, to award EUR 3,000 under this head.

C. Costs and expenses

44. The applicant sought reimbursement of her legal costs. The applicant claimed a lump sum of ITL 30,000,000 [EUR 15,493.71] for her costs and expenses before the national courts together with costs and expenses before the Court.

45. As regards the costs incurred in the domestic proceedings, the Government argued that the costs of the proceedings on the merits were not related to the alleged violations.

46. The Court considers that the costs of the enforcement proceedings must be reimbursed in part (see the *Scollo v. Italy* judgment of 28 September 1995, Series A no. 315-C, p. 56, § 50). It considers, however, 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 2,200. In accordance with the Court's practice, this sum should be awarded under the head of pecuniary damage (see § 40 above).

47. As regards the costs and expenses incurred by the applicant for the proceedings before the Court, the Court reiterates that, according to its 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). In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that EUR 1,500 is a reasonable sum and awards the applicant that amount.

D. Default interest

48. 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) 21,700 EUR (twenty-one thousand seven hundred euros) for pecuniary damage;
 - (ii) 3,000 EUR (three thousand euros) for non-pecuniary damage;
 - (iii) 1,500 EUR (one thousand five hundred 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