CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF L. AND P. v. ITALY

(Application no. 32392/96)

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 L. and P. 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. 32392/96) 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 Mrs L.L. and Mrs D.P., Italian nationals ("the applicants"), on 13 May 1996.

2. The applicants were represented by Mr L. Ferretti, a lawyer practising in Pisa. The Italian Government ("the Government") were represented by their Agent, Mr U. Leanza, and by their co-Agent, Mr V. Esposito.

3. The applicants complained under Article 1 of Protocol No. 1 to the Convention that they had been unable to recover possession of their flat within a reasonable time owing to a lack of police assistance. Invoking Article 6 § 1 of the Convention, they 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 applicants are the owners of a flat in Ghezzano di San Giuliano Terme (Pisa) which had been let to V.F.

9. In a registered letter of 5 December 1990, the applicants informed the tenant that they intended to terminate the lease on expiry of the term on 30 June 1991 and asked him to vacate the premises by that date.

10. In a writ served on the tenant on 23 December 1991, the applicants reiterated their intention to terminate the lease and summoned the tenant to appear before the Pisa Magistrate.

11. By a decision of 31 January 1992, which was made enforceable on 6 February 1992, the Pisa Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 January 1993.

12. On 27 January 1994, the applicants served notice on the tenant requiring him to vacate the premises.

13. On 14 February 1994, they served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 28 February 1994.

14. Between 28 February 1994 and 25 April 1998 the bailiff made twelve attempts to recover possession. Each attempt proved unsuccessful, as, under the statutory provisions providing for the staggering of evictions, the applicants were not entitled to police assistance in enforcing the order for possession.

15. In June 1998, the applicants repossessed their flat.

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 applicants complained that they had been unable to recover possession of their flat within a reasonable time owing to the lack of police assistance. They 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 applicants' right to peaceful enjoyment of their 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 applicants 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.

22. The Government pointed out 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 applicants' right to the peaceful enjoyment of their property was therefore consistent with the relevant legislation. The Government concluded that the burden imposed on the applicants 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 applicants were afforded sufficient guarantees as to be safeguarded against uncertainty and arbitrariness.

24. The Court observes that the applicants obtained an order for possession, which became enforceable on 6 February 1992, indicating that the tenant should quit the flat on 31 January 1993. The first attempt by a bailiff to enforce the order for possession took place on 28 February 1994. Between 28 February 1994 and 25 April 1998 the bailiff's attempts to recover possession proved unsuccessful, on account partly of the legislation providing for evictions to be staggered, partly of the lack of police assistance. Indeed, the applicants only recovered possession of their flat in June 1998, when the tenant voluntary surrendered possession.

25. For approximately four years and four months starting from the first attempt of the bailiff to enforce the order for possession, the applicants were

thus left in a state of uncertainty as to when they would be able to repossess their flat.

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 applicants; 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 applicants' 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 applicants 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 applicants complained that they had had to wait approximately four years and four months to recover possession of their flat after the magistrate's order was issued.

29. 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.

30. The Court observes that the applicants 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 applicants obtained an order for possession on 31 January 1992, which became enforceable on 6 February 1992. Indeed, the applicants recovered their flat approximately four years and four months after the first attempt of the bailiff, when the tenant voluntary surrendered possession.

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 applicants sought reparation for the pecuniary damage they had sustained, which they put at 100,412,986 Italian lire (ITL) [51,858.98 euros (EUR)], the sum of ITL 56,000,000 [EUR 28,921.59] being the loss of rent for the period from August 1992 (the date the legislation relaxing restrictions on rent levels entered into force) to June 1998 (the date when the tenant voluntary surrendered possession), the sum of ITL 33,412,986 [EUR 17,256.37] being the amount of the interests and the monetary revaluation, the sum of ITL 11,000,000 [EUR 5,681.03] for the costs of executing the possession order.

37. The Government contested the period calculated by the applicants. 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 and that the costs incurred during the enforcement stage were due only for the period that was regarded as being a disproportionate interference with the applicants' right of property.

38. The Court considers that the applicants 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 they could have endorsed and the rents they effectively collected. Having regard to the means of calculation proposed by the applicants, the Court, in the light of the evidence before it and the period concerned, decides to award them on an equitable basis EUR 2,600 (EUR 1,300 each) under this head.

39. The Court finds no reason for awarding any additional sum for "interests and the monetary revaluation".

As regards the costs of the enforcement proceedings, the Court considers that they 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 applicants the sum of EUR 1,000 (EUR 500 each).

B. Non-pecuniary damage

40. The applicants claimed ITL 5,000,000 [EUR 2,582.28] for non-pecuniary damage. However, they left the matter to be assessed by the Court in an equitable manner.

41. The Government stressed that the applicants had failed to adduce evidence of non-pecuniary damage sustained.

42. The Court considers that the applicants must have sustained some non-pecuniary damage, which the mere finding of a violation cannot adequately compensate. Therefore, the Court decides to award EUR 2,500 (EUR 1,250 each) under this head.

C. Costs and expenses

43. The applicants sought reimbursement of their legal costs, which they put at ITL 10,089,200 [EUR 5,210.64] for their costs and expenses before the Court. However, they left the matter to be assessed by the Court in an equitable manner.

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

45. 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 applicants and are reasonable as to quantum (see the case *Bottazzi v. Italy* [GC], no. 34884/97, § 30, 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 (EUR 750 each) is a reasonable sum and awards the applicants that amount.

D. Default interest

46. 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 each of the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) 1,800 EUR (one thousand eight hundred euros) for pecuniary damage;
      (ii) 1,250 EUR (one thousand two hundred fifty euros) for non-pecuniary damage;
      (iii) 750 EUR (seven hundred fifty 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 applicants' 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