



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

FIRST SECTION

CASE OF D.V. v. ITALY

(Application no. 32589/96)

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 D.V. 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. 32589/96) against Italy lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 by an Italian national, Mrs V. (“the applicant”), on 19 June 1996. Before the Court the applicant was represented by Mr G. Viligiardi, a lawyer practising in Florence.

2. 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 owing to a lack of police assistance. 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 (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is an Italian national, born in 1956 and living in Florence.

9. The applicant is the owner of an apartment in Florence, which she had let to P.R. and A.R.Z.

10. In a registered letter of 7 June 1989, the applicant informed the tenants that she intended to terminate the lease on expiry of the term on 15 December 1989 and asked them to vacate the premises by that date.

11. On 8 June 1989, she served a notice to quit on the tenants, but they refused to leave.

12. In a writ served on the tenants on 21 October 1989, the applicant reiterated her intention to terminate the lease and summoned the tenants to appear before the Florence Magistrate.

13. By a decision of 20 November 1989, which was made enforceable on 27 November 1989, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 15 December 1990.

14. On 18 December 1990, the applicant made a statutory declaration that she urgently required the premises as accommodation for herself.

15. On 28 December 1990, the applicant served notice on the tenants requiring them to vacate the premises.

16. On 22 January 1991, she served notice on the tenants informing them that the order for possession would be enforced by a bailiff on 6 February 1991.

17. Between 6 February 1991 and 27 February 2000, the bailiff made twenty-one attempts to recover possession. Each attempt proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

18. On 15 March 2001, the applicant recovered possession of the apartment.

II. RELEVANT DOMESTIC LAW

19. The relevant domestic law is described in the Court's judgment in the case of *Immobiliare Saffi v. Italy* [GC], no. 22774/93, 28.7.99, §§ 18-35, ECHR 1999-V.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

20. 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

21. 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*

22. 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*

23. 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).

24. 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 her case, as she had made a statutory declaration that she urgently required the premises as accommodation for her own use.

25. The Government pointed out that the interference with the applicant's right to the peaceful enjoyment of her 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. The Government pointed out that the statutory measures had been taken in the general interest to protect tenants, regard being had to the inner-city-housing crisis and the difficulty in providing adequate housing for low-income tenants who have been evicted.

26. 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*, the *Immobiliare Saffi* judgment 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.

27. The Court observes that the applicant obtained an order for possession on 27 November 1989, indicating that the tenant should quit the flat on 15 December 1990. The first attempt by a bailiff to enforce the order for possession took place on 6 February 1991. 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 her flat on 15 March 2001, even though she had made a statutory declaration on 18 December 1990 confirming that she urgently needed the flat for her own use.

28. Until 18 December 1990, she 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 *Immobiliare Saffi* cited above, § 56). Although the order for possession was enforceable and the applicant had made a statutory declaration entitling her to priority in the grant of police assistance, she had no means of expediting the process, which depended almost entirely on the availability of police officers. The relevant authorities do not seem to have taken any action whatsoever in response to the statutory declaration by the applicant on 18 December 1990 that she needed the premises for her own use.

29. For approximately ten years and one month, starting from the first attempt of the bailiff to enforce the order of possession, the applicant was thus left in a state of uncertainty as to when she would be able to repossess her flat.

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; 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

31. 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..."

32. The applicant complained that she had had to wait eleven years to recover possession of her flat after the magistrate's order was issued. Furthermore, she argued that despite the fact that she had made a statutory declaration that she urgently required the premises as accommodation for her own use, she had had to wait approximately ten years and three months from the date the declaration was made before recovering possession.

33. 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.

34. 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 firstly be examined in connection with the more general right to a court.

35. 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.

36. In the instant case, the applicant obtained an order for possession on 20 November 1989, indicating that the tenant should quit the flat on 15 December 1990.

37. Even after she had made the statutory declaration, the applicant was not granted police assistance. Indeed, the applicant recovered her flat only ten years after the first access of the bailiff when the tenant left the premises on his own.

38. 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.

39. 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

40. 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

41. The applicant sought reparation for the pecuniary damage she had sustained, which she put as a global amount at 127,524,320 Italian lire (ITL) [65,860.81 euros (EUR)], detailed as ITL 121,159,000 [EUR 62,573.40], being the loss of rent for the period from 15 August 1988 to 24 September 1999, that is to say, the difference between the global amount of the rents the applicant had to pay for the flat where she was forced to live and the rent she endorsed for her own flat on the same period, ITL 1,980,000 [EUR 1,022.58] for the ICI (“*Imposta Comunale sugli Immobili*”) – Real Municipal Tax and ITL 4,384,920 [EUR 2,264.62] for the costs of executing the possession order.

42. The Government conceded that the applicant should be awarded the damage which she had incurred for loss of rent due to the excessive length of the proceedings but contested the period calculated by the applicant.

43. The Government argued that the costs incurred by the applicant for the Real Municipal Tax were not related to the alleged violations.

44. 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 applicant's right of property.

45. 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 applicant the sum of EUR 2,000.

46. As to the loss of profit from rental income, the Court considers that a compensation award must be made on the basis of the reimbursement of the difference between the global amount of the rents the applicant had to pay for the flat where she was forced to live and the rent she endorsed for her own flat on the same period. Therefore on the basis of the information in its possession, it decides to award EUR 30,000 under this head.

47. The Court awards a total sum of EUR 32,000 for pecuniary damage.

B. Non-pecuniary damage

48. The applicant left the matter to be assessed by the Court in an equitable manner.

49. The Government do not submit any comments on that point.

50. The Court considers that the applicant must have sustained some non-pecuniary damage, which the mere finding of a violation cannot adequately compensate. The Court decides, on an equitable basis, to award EUR 9,000 under this head.

C. Default interest

51. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus 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) EUR 32,000 (thirty two thousand euros) for pecuniary damage;
 - (ii) EUR 9,000 (nine thousand euros) for non-pecuniary damage;
 - (b) that simple interest at an annual rate equal to the marginal lending rate the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the applicant's claims 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