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

FIRST SECTION

CASE OF MALTONI v. ITALY

(Application no. 31548/96)

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 Maltoni 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. 31548/96) 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 Anna Maria Maltoni ("the applicant"), on 5 December 1995.

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. 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 22 March 2001 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. D.L.F. and D.E. were the owners of a flat in Florence, which they had let to F.M.

9. In a registered letter of 30 December 1982, they informed the tenant that they intended to terminate the lease on expiry of the term on 31 December 1983 and asked him to vacate the premises by that date.

10. In a writ served on the tenant on 8 March 1986 D.L.F and D.E. reiterated their intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

11. By a decision of 6 May 1986, which was made enforceable on 16 May 1986, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 June 1988.

12. On 28 April 1988, the applicant became the owner of the apartment.

13. On 21 December 1990, the applicant served notice on the tenant requiring him to vacate the premises.

14. On 10 January 1991, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 18 March 1991.

15. Between 18 March 1991 and 6 December 1991, the bailiff made three attempts to recover possession. After the third attempt, the applicant decided to discontinue the enforcement proceedings because of the lack of police assistance.

16. On 8 February 1995, the applicant made a statutory declaration that she urgently required the premises as accommodation for her own use.

17. On 20 February 1995, the applicant served notice again on the tenant requiring him to vacate the premises.

18. On 14 March 1995, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 15 May 1995.

19. Between 15 May 1995 and 14 April 1997, the bailiff made five attempts to recover possession. Each attempt proved unsuccessful, as, under the statutory provisions providing for the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

20. Following a friendly settlement, in January 1998 the tenant vacated the premises.

II. RELEVANT DOMESTIC LAW

21. 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

22. 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

23. 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

24. 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

25. 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 judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (see *Immobiliare Saffi*, cited above, § 49).

26. The applicant contended that 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. Indeed, she had only recovered possession because she had managed to obtain the tenant's agreement, not because she had police assistance.

27. 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.

28. 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.

29. The Court observes that the order for possession became enforceable on 16 May 1986 and indicated that the tenant should quit the flat on 30 June 1988. The first attempt by a bailiff to enforce the order for possession took place on 18 March 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 in January 1998, even though

she had made a statutory declaration on 8 February 1995 confirming that she urgently needed the flat for her own use.

30. For approximately six years and ten months 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. Until 8 February 1995, 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 8 February 1995 that she needed the premises for her own use.

31. 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

32. 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..."

33. The applicant complained that she had had to wait approximately eleven years and eight months 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 to wait approximately three years from the date the declaration was made before recovering possession.

34. 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 was justified by the protection of the public interest.

35. 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 case must be examined in connection with the more general right to a court.

36. 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.

37. In the instant case, the order for possession issued by the Florence Magistrate on 6 May 1986 became enforceable on 16 May 1986. For a period of more than three years and ten months, from 18 March 1991 until 8 February 1995 when the applicant made a statutory declaration that she needed the premises for her own use, enforcement of the order for possession in her favour was postponed on a number of occasions.

38. Even after she had made the statutory declaration, the applicant was not granted the police assistance. Indeed, the applicant recovered possession of her flat in January 1998 only after the friendly settlement reached with the tenant more than six years and ten months after the first attempt of the bailiff.

39. 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.

40. 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

41. 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

42. The applicant sought reparation for the pecuniary damage she had sustained, which she put at 32,400,000 Italian lire (ITL) [16,733.20 euros (EUR)], the sum of ITL 31,150,000 [EUR 16,087.63] being the difference between her extra cost of living and the rent for the period of the eviction proceedings (the applicant maintained she had to move from Florence to Bologna and, therefore, to commute everyday), the sum of ITL 1,250,000 [EUR 645.57] being the amount that the applicant

had to pay for the ICI ("*Imposta Comunale sugli Immobili*") – municipal real estate tax.

43. The Government stressed that the applicant had failed to adduce evidence of any pecuniary damage sustained as a result of the alleged violation. As regards the costs incurred by the applicant for the municipal real estate tax, the Government argued that they were not related to the alleged violations.

44. The Court considers that there is no causal link between the violations found and the alleged pecuniary damage and dismisses that claim.

45. In the light of the evidence before it and the period concerned, and ruling on an equitable basis, the Court awards the applicant EUR 6,300 under this head.

B. Non-pecuniary damage

46. The applicant claimed ITL 80,000,000 [EUR 41,316.55] for the non-pecuniary damage.

47. The Government submitted that in any event the amount claimed was excessive.

48. The Court considers that the applicant must have sustained some non-pecuniary damage. Therefore, the Court decides, on an equitable basis, to award EUR 6,000 under this head.

C. Default interest

49. 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) 6,300 EUR (six thousand three hundred euros) for pecuniary damage;

(ii) 6,000 EUR (six thousand euros) for non-pecuniary damage;

(b) that simple interest at an annual rate equal to the marginal lending rate of 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 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