



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

FIRST SECTION

CASE OF MERICO v. ITALY

(Application no. 31129/96)

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 Merico 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. 31129/96) 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 Giancarlo Merico (“the applicant”), on 25 October 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 he had been unable to recover possession of his flat within a reasonable time.

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 30 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 an apartment in Milan, which he had let to S.P.

9. In a registered letter of 28 June 1988, the applicant informed the tenant that he intended to terminate the lease on expiry of the term on 1 July 1988 and asked her to vacate the premises by that date.

10. In a writ served on the tenant on 20 February 1991, the applicant reiterated his intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

11. By a decision of 14 March 1991, which was made enforceable on 27 March 1991, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1992.

12. On 30 November 1992, the applicant served notice on the tenant requiring her to vacate the premises. On an unidentified date, he served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 19 February 1993.

13. On 3 December 1993, the applicant made a statutory declaration that he urgently required the premises as accommodation for his mother.

14. Between 19 February 1993 and 12 May 1997 the bailiff made twenty 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.

15. On 31 August 1997, the applicant repossessed the apartment.

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 mother.

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 considered 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. Therefore, 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 27 March 1991, indicating that the tenant should quit the flat on 31 December 1992. The first attempt by the bailiff to enforce the order for possession took place on 19 February 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 on 31 August 1997, even though he had made a statutory declaration on 3 December 1993 confirming that he urgently needed the flat for his mother. The applicant was only able to regain possession of the flat on 31 August 1997.

25. For approximately four years and six months, starting from the first attempt of the bailiff to enforce the order for possession, the applicant was 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 3 December 1993 that he needed the premises for his mother.

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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant sought reparation for the pecuniary damage he had sustained, which he put at 47,796,000 Italian lire (ITL) [24,684.57 euros (EUR)], being the difference between the effective rent paid by the tenant from 1993 to 1997 and the rental table fixed by the ISTAT, National Institute of Statistics. Furthermore, the applicant sought reimbursement of his legal costs, which he put at ITL 4,200,000 [EUR 2,169.12] for the execution of the possession order.

29. The Government contested the period calculated by the applicant stressing that the period of interference to be taken into consideration should be divided in two. 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.

30. 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 8,000 euros (EUR) under this head.

As regards the costs of the enforcement proceedings, the Court decides to award the amount claimed in full [EUR 2,169.12] (see *Immobiliare Saffi*, cited above, § 79).

B. Default interest

31. 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, 10,169.12 EUR (ten thousand one hundred sixty-nine euros twelve cents) for pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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