



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

FIRST SECTION

CASE OF TOSI v. ITALY

(Application no. 33204/96)

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 Tosi 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. 33204/96) against Italy lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 by an Italian national, Mrs Elda Tosi (“the applicant”), on 4 April 1996.

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 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 was born in 1931 and lives in Milan.

9. The applicant is the owner of an apartment in Milan, which she had let to M.A.H. on 1 March 1987.

10. In a writ served on the tenant on 13 February 1991 the applicant informed the tenant that she intended to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

11. By a decision of 15 March 1991, which was made enforceable on 19 March 1991, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises must be vacated by 30 September 1991.

12. On 10 July 1991, the applicant served notice on the tenant requiring him to vacate the premises.

13. On 18 November 1991 she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 29 November 1991.

14. Between 29 November 1991 and 22 January 1999 the bailiff made twenty-four 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.

15. On 22 November 1999, the applicant repossessed the premises with the assistance of the police.

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, 28.7.99, §§ 18-35, ECHR 1999-V.

THE LAW

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

17. 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

18. 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

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.

22. The Government pointed out that the only ground for eviction in the present case was that the lease had expired, a factor that did not warrant the applicant's being given any priority in the provision of police assistance. 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.

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*, 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.

24. The Court notes that, by applying the aforementioned legislation and deciding that the applicant did not need to recover possession of the flat as a matter of urgency, the Italian authorities had made her wait approximately eight years between the date fixed by the magistrate for the eviction and the grant of police assistance. Even with police assistance, she did not regain possession of her flat until 22 November 1999.

25. For approximately eight years after the first attempt of the bailiff, the applicant was thus left in a state of uncertainty as to when she would be able to repossess her 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 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

27. 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...”

28. The applicant complained that she had had to wait eight years and two months to recover possession of her 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 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.

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 applicant obtained an order for possession on 15 March 1991, which became enforceable on 19 March 1991

33. The applicant recovered her flat only eight years after the first attempt of the bailiff.

34. 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.

35. 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

36. 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

37. The applicant sought reparation for the pecuniary damage she had sustained, which she put at 63,452,000 Italian lire (ITL) [32,770.22 euros (EUR)], being the loss of rent for the period from 1 September 1992 to 22 November 1999, and ITL 5,000,000 [EUR 2,582.28] for the costs of the proceedings.

38. The Government challenged the criteria that had been used for calculating the loss of profits. 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.

39. 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 rents 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 18,000 under this head.

40. As regards the costs of proceedings, the Court notes that Rule 60 of the Rules of Court requires applicants to submit itemised particulars of their claims, together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part". Nevertheless, since the applicant does not specify if the legal costs she had incurred concerned the domestic proceedings on the merits or the costs of the enforcement proceedings, the Court agrees with the Government on this matter and decides to award a lump sum for the enforcement proceedings of EUR 1,000.

The Court awards a total sum of EUR 19,000 for pecuniary damage.

B. Default interest

41. 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, EUR 19,000 (nineteen thousand euros) for 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