



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

FIRST SECTION

CASE OF TONA v. ITALY

(Application no. 33252/96)

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 Tona 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. 33252/96) 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 Giuseppe Tona (“the applicant”), on 4 July 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 he had been unable to recover possession of his flat within a reasonable time. Invoking Article 6 § 1 of the Convention, he 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 4 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 was born in 1942 and lives in Florence.

9. The applicant is the owner of a flat in Florence which he had let to G.F.

10. In a registered letter of 6 June 1989, the applicant informed the tenant that he intended to terminate the lease on expiry of the term on 30 April 1992 and asked him to vacate the premises by that date.

11. In a writ served on the tenant on 27 September 1989 the applicant reiterated his intention to terminate the lease and summoned the tenant to appear before the Florence Magistrate.

12. By a decision of 6 November 1989, which was made enforceable on 7 December 1989, the Florence Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 April 1993.

13. On 28 September 1991, the applicant made a statutory declaration that he urgently required the premises as accommodation for his daughter.

14. On 14 May 1993, the applicant served notice on the tenant requiring him to vacate the premises.

15. On 18 June 1993, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 23 June 1993.

16. Between 23 June 1993 and 15 December 1998 the bailiff made 13 attempts to recover possession.

17. On 10 September 1998, the applicant made a second statutory declaration that he urgently required the premises as accommodation for his daughter.

18. Each attempt of the bailiff proved unsuccessful, as the applicant was never granted the assistance of the police in enforcing the order for possession.

19. On 25 August 1999, the applicant served notice again on the tenant informing him that the order for possession would be enforced by a bailiff on 9 November 1999.

20. On 17 September 1999, the tenant asked the Florence District Court to set a fresh date for the enforcement of the order for possession pursuant to Section 6 of Law No. 431/98.

21. On 9 November 1999, the bailiff attempted to recover possession of the applicant's apartment without success due to the lack of police assistance. He adjourned the enforcement proceedings to 23 March 2000.

22. On 26 January 2001, the applicant recovered possession of his flat.

II. RELEVANT DOMESTIC LAW

23. 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

24. The applicant complained that he had been unable to recover possession of his flat within a reasonable time owing to 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

25. 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

26. 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*

27. 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).

28. The applicant contended that the interference was disproportionate in view of its length. 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 daughter’s use.

29. 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 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. The Government added that a large number of leases had expired in 1982 and 1983 and that the simultaneous execution of repossession orders in respect of all the premises concerned would have resulted in severe social unrest. The purpose of the measures in issue had therefore been to maintain order. It had been necessary to stagger the provision of police assistance because it was impossible to guarantee everyone assistance at the same time.

30. 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.

31. The Court observes that the applicant obtained an order for possession on 6 November 1989, indicating that the tenant should quit the flat on 30 April 1993. The first attempt by a bailiff to enforce the order for possession took place on 23 June 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 26 January 2001, even though he had made a statutory declaration on 28 March 1991 confirming that he urgently needed the flat for his daughter's use.

32. For seven years and seven months starting from the first attempt of the bailiff to enforce the order of possession, the applicant was left in a state of uncertainty as to when he would be able to repossess his flat. Until 28 March 1991, he 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 him to priority in the grant of police assistance, he 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 28 March 1991 that he needed the premises for his daughter's use.

33. 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

34. 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..."

35. The applicant complained that he had had to wait more than eleven years to recover possession of his flat after the magistrate's order was issued. Furthermore, he argued that despite the fact that he had made a statutory declaration that he urgently required the premises as accommodation for his daughter's use, he had had to wait approximately

nine years and four months from the date the declaration was made before recovering possession.

36. 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.

37. 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.

38. 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.

39. In the instant case, the applicant obtained an order for possession on 6 November 1989, which became enforceable on 7 December 1989.

40. Even after he had made the statutory declaration, the applicant was not granted the police assistance. Indeed, the applicant recovered his flat only seven years and seven months after the first attempt of the bailiff.

41. 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.

42. 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

43. 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

44. The applicant sought reparation for the pecuniary damage he had sustained, which he put at 65,586,000 Italian lire (ITL) [33,872.34 euros (EUR)], being the loss of rent for the period from 1 May 1993 to 31 October 2000, ITL 10,500,000 [EUR 5,422.80] for the costs of executing the possession order, ITL 3,650,000 [EUR 1,885.07] for the costs of the

proceedings on the merits, ITL 1,068,144 [EUR 551.65] for the costs of the divorce proceedings of his daughter and ITL 4,473,080 [EUR 2,310.15] for the costs of his daughter's proceedings as she was also to leave a flat.

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

46. As regards the costs of the enforcement proceedings, the Court considers that they must be reimbursed (see the *Scollo v. Italy* judgment of 28 September 1995, Series A no. 315-C, p. 56, § 50). 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, awards him the amount requested, EUR 5,422.80 under this head. As to the procedural costs incurred in the proceedings on the merits and the two proceedings of his daughter, the Court agrees with the Government that there is no direct causal link with the violations that have been found.

As to the loss of profit from rental income, the Court considers that a compensation award must be made. It considers the means of calculation proposed by the applicant to be a reasonable starting point. However, in the light of the evidence before it and the period concerned, and ruling on an equitable basis, it decides to award EUR 15,000 under this head.

The Court awards a total sum of EUR 20,422.80 for pecuniary damage.

B. Non-pecuniary damage

47. The applicant left the matter to be assessed by the Court in an equitable manner. He alleges that his daughter's divorce is due to the fact that she and her husband had to live with his husband's parents and grandparents because she could not move into her father's flat. Another consequence of the fact that the applicant could not recover possession of his flat is that his daughter also had to live far away from her family and her work.

48. The Government stressed that the applicant had failed to adduce evidence of non-pecuniary damage sustained as a result of the alleged violation.

49. The Court considers that the applicant must have sustained some non-pecuniary damage which the mere finding of a violation cannot adequately compensate. Therefore, the Court decides, on an equitable basis, to award EUR 6,000 under this head.

C. Default interest

50. 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 20,422.80 (twenty thousand four hundred and twenty-two euros eighty cents) for pecuniary damage;
 - (ii) EUR 6,000 (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 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