CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF SAVIO v. ITALY

(Application no. 31012/96)

JUDGMENT

STRASBOURG

19 December 2002

FINAL

19/03/2003

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 Savio v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
Mr G. RAIMONDI, ad hoc *judge*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 5 December 2002,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 31012/96) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mrs Daniela Savio ("the applicant"), on 22 February 1996.

2. The applicant was represented by Mr P. Giacomazzo, a lawyer practising in Padova. 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 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).

5. On 29 June 2000 the Court declared the application admissible.

6. 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

7. The applicant was born in 1957 and lives in Padova.

8. The applicant is the owner of an apartment in Padova, which she had let to F.C.

9. In a registered letter of 4 July 1989, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1991 and asked him to vacate the premises by that date.

10. In a writ served on the tenant on 6 September 1989, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Padova Magistrate.

11. By a decision of 19 September 1989, which was made enforceable on 26 September 1989, the Padova Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 December 1992.

12. On 20 April 1993, the applicant served notice on the tenant requiring him to vacate the premises.

13. On 8 June 1993, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 17 July 1993.

14. Between 17 July 1993 and 27 February 1995 the bailiff made five attempts to recover possession.

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

16. Thereafter, the applicant decided not to pursue the enforcement proceedings, in order to avoid useless costs, given the lack of prospects of obtaining the assistance of the police.

17. On 7 December 1995, the applicant made a statutory declaration that she urgently required the premises as accommodation for herself.

18. On 23 January 1998, the tenant vacated 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, §§ 18-35, ECHR 1999-V.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 AND OF ARTICLE 6 § 1 OF THE CONVENTION

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."

21. 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..."

22. The Court has on several previous occasions decided cases raising similar issues as in the present case and found a violation of Articles 1 of Protocol No. 1 and 6 § 1 of the Convention (see *Immobiliare Saffi*, cited above, §§ 46-66; *Lunari v. Italy*, no. 21463/9, 11 January 2001, §§ 34-46; *Palumbo v. Italy*, no. 15919/89, 30 November 2000, §§ 33-47).

The Court has examined the present case and finds that there are no facts or arguments from the Government which would lead to any different conclusion in this case. The Court refers to its detailed reasons in the judgments cited above and notes that in this case the applicant has had to wait for four years and six months from the first attempt of the bailiff before recovering the flat.

Consequently, there has been a violation of Article 1 of Protocol No. 1 and of Article 6 § 1 of the Convention in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant sought reparation for the pecuniary damage she had sustained, which she put at 27,500,000 Italian lire (ITL) [14,202.56 euros (EUR)], being the loss of rent for the period from 31 December 1992 (the date for vacating the flat) to 23 January 1998 and ITL 2,844,026 [EUR 1,468.82] for the costs of executing the possession order.

25. The Government conceded that the applicant should be awarded the damage which she had incurred for loss of rent for the excessive length of the proceedings. As regards the costs incurred in the domestic proceedings, the Government argued that the costs of the proceedings on the merits and the ones for renovation works in the flat after possession, were not related to the alleged violations.

26. 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). 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 on an equitable basis EUR 4,000 under this head. 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 decides to award the amount of EUR 1,300 on an equitable basis.

Consequently the Court awards a total sum of EUR 5,300 for pecuniary damage.

B. Non-pecuniary damage

27. The applicant claimed ITL 10,000,000 [EUR 5,164.57] for non-pecuniary damage.

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

29. 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 5,000 under this head.

C. Costs and expenses

30. The applicant sought reimbursement of her legal costs, which she put at ITL 4,244,343 [EUR 2,192.02] for her costs and expenses before the Court.

31. The Government left the matter to the discretion of the Court.

32. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see the case *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V). In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that EUR 2,000 is a reasonable sum and awards the applicant that amount.

D. Default interest

33. 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, the following amounts:
      (i) 5,300 EUR (five thousand three hundred euros) for pecuniary damage;
      (ii) 5,000 EUR (five thousand euros) for non-pecuniary damage;
      (iii) 2,000 EUR (two thousand euros) for legal costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 19 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President