



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

FIRST SECTION

**CASE OF MALESCIA v. ITALY**

*(Application no. 42343/98)*

JUDGMENT

STRASBOURG

3 April 2003

**FINAL**

*03/07/2003*

*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 Malescia 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 L. FERRARI BRAVO, *ad hoc judge*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 13 March 2003,

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

**PROCEDURE**

1. The case originated in an application (no. 42343/98) 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 Maria Malescia (“the applicant”), on 6 April 1998.

2. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their co-Agent, Mr F. Crisafulli.

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 L. Ferrari Bravo as *ad hoc* judge to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 2).

6. On 4 October 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. The applicant was born in 1938 and lives in Milan.

9. The facts of the case, as submitted by the parties, may be summarised as follows.

10. Stelios company was the owner of an apartment in Milan which it had let to E.T.

11. In a registered letter sent in December 1990, Stelios informed the tenant that it intended to terminate the lease on expiry of the term on 29 September 1992 and asked him to vacate the premises by that date.

12. In a writ served on the tenant on 19 March 1991, Stelios reiterated its intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

13. By a decision of 4 April 1991, which was made enforceable on 30 June 1993, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by the same date.

14. On 15 December 1992, the applicant became the owner of the apartment and pursued the enforcement proceedings.

15. On 15 November 1993, the applicant served notice on the tenant requiring him to vacate the premises.

16. On 25 January 1994, she served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 11 February 1994.

17. In a registered letter of 13 March 1995, the applicant proposed negotiations to the tenant in order to settle their dispute, but they failed.

18. Between 11 February 1994 and 15 March 1999, the bailiff made seventeen attempts to recover possession.

19. Each attempt proved unsuccessful, as, under the statutory provisions providing for the suspension or the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

20. On 14 December 1999, the enforcement of the order for possession was suspended pursuant Section 6 of Law no. 431/98 and set for 12 May 2000.

21. On 9 May 2000 and 13 June 2000, the bailiff made two attempts to recover possession.

22. Later in June 2000, the applicant recovered possession of the apartment.

### 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 AND OF ARTICLE 6 § 1 OF THE CONVENTION

24. 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.”

25. 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...”

26. The Court has on several previous occasions decided cases raising similar issues as in the present case and found a violation of Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention (see *Immobiliare Saffi*, cited above, §§ 46-66; *Lunari v. Italy*, no. 21463/93, 11 January 2001, §§ 34-46; *Palumbo v. Italy*, no. 15919/89, 30 November 2000, §§ 33-47).

27. 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 more than six years and four months from the first attempt of the bailiff before recovering the flat.

28. Consequently there has been a violation of Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention.

### II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant sought reparation for the pecuniary damage she had sustained, which she put at 53,900,000 Italian Lire (ITL) [27,837.03 euros (EUR)], for the loss of rent for the period from 1<sup>st</sup> July 1993 to the end of June 2000 under the legislation relaxing restrictions on rent levels; 50,000,000 ITL [25,822.84 EUR] for the unavailability of the flat; and 2,850,000 ITL [1,471.90 EUR] for the costs of executing the possession order.

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

32. 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 9,000, which also include the unavailability of the flat.

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 1,000.

The Court awards a total sum of EUR 10,000 for pecuniary damage.

### B. Non-pecuniary damage

33. The applicant sought reparation for non-pecuniary damage. She left the matter to be assessed by the Court in an equitable manner.

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

35. The Court considers that the applicant must have sustained some non-pecuniary damage, which the mere finding of a violation cannot adequately compensate. The Court decides to award EUR 3,000 under this head.

### C. Costs and expenses

36. The applicant sought reimbursement for her costs and expenses before the Court, which he put at ITL 5,300,000 [2,732.22 EUR].

37. 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 (*Bottazzi v. Italy*, no. 34884/97, Reports of Judgments and Decisions 1999-V, § 30). In the present case, on the basis of the information in its

possession and the above-mentioned criteria, the Court considers that EUR 500 is a reasonable sum and awards the applicant that amount.

#### **D. Default interest**

38. 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) 10,000 EUR (ten thousand euros) for pecuniary damage;
    - (ii) 3,000 EUR (three thousand euros) for non-pecuniary damage;
    - (iii) 500 EUR (five hundred 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 3 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Deputy Registrar

Christos ROZAKIS  
President