



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

FIRST SECTION

**CASE OF C. SPA v. ITALY**

*(Application no. 34999/97)*

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 C. Spa 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. 34999/97) 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 C. Spa (“the applicant”), an Italian company, on 16 September 1996.

2. The applicant was represented by Mr B. Dell'Acqua, a lawyer practising in Milan. The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their successive co-agents, respectively Mr V. Esposito and Mr F. Crisafulli.

3. The applicant complained under Article 1 of Protocol No. 1 that it had been unable to recover possession of its flats within a reasonable time. Invoking Article 6 § 1 of the Convention, it 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 13 September 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 is a company based in Lainate.

9. In 1987, it became the owner of several flats in Milan, which had all been leased by the previous owner.

#### *1) Proceedings against A.D.P.*

10. In a writ served on the tenant on 2 October 1987, the applicant communicated its intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

11. By a decision of 13 October 1987, which was made enforceable on 20 October 1987, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 29 March 1990.

12. On 21 April 1990, the applicant served notice on the tenant requiring him to vacate the premises.

13. On 11 May 1990, it served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 8 June 1990.

14. Between 8 June 1990 and 8 November 1999, the bailiff made thirty-five 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 19 May 2000, the applicant recovered possession of the flat.

#### *2) Proceedings against J.D.*

16. In a writ served on the tenant on 2 October 1987, the applicant communicated its intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

17. By a decision of 13 October 1987, which was made enforceable on 20 October 1987, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 29 March 1989.

18. On 20 November 1990, the applicant served notice on the tenant requiring him to vacate the premises.

19. On 10 December 1990, it served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 4 January 1991.

20. Between 4 January 1991 and 11 November 1997, the bailiff made twenty-seven 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.

21. In March 1998, the tenant vacated the premises.

*3) Proceedings against C.F.C.*

22. In a writ served on the tenant on 2 October 1987, the applicant communicated its intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

23. By a decision of 13 October 1987, which was made enforceable on 20 October 1987, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 29 March 1990.

24. On 21 April 1990, the applicant served notice on the tenant requiring him to vacate the premises.

25. On 11 May 1990, it served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 8 June 1990.

26. Between 8 June 1990 and 11 April 2000, the bailiff made thirty-eight 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.

27. On an unspecified date, the applicant recovered possession of the flat.

*4) Proceedings against V.D.*

28. In a writ served on the tenant on 2 October 1987, the applicant communicated its intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

29. By a decision of 13 October 1987, which was made enforceable on 20 October 1987, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 29 March 1990.

30. On 21 April 1990, the applicant served notice on the tenant requiring him to vacate the premises.

31. On 11 May 1990, it served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 8 June 1990.

32. Between 8 June 1990 and 8 November 1999, the bailiff made thirty-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.

33. In June 1998, the tenant vacated the premises.

5) *Proceedings against V.L.*

34. In a writ served on the tenant on 2 October 1987, the applicant communicated its intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

35. By a decision of 13 October 1987, which was made enforceable on 20 October 1987, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 29 March 1990.

36. On 21 April 1990, the applicant served notice on the tenant requiring him to vacate the premises.

37. On 11 May 1990, it served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 8 June 1990.

38. Between 8 June 1990 and 1 February 2000, the bailiff made thirty-eight 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.

39. On an unspecified date, the applicant recovered possession of the flat.

## II. RELEVANT DOMESTIC LAW

40. 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

41. The applicant complained that it had been unable to recover possession of its flats within a reasonable time owing to the lack of police assistance. It 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.”

42. 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...”

43. 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).

44. 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 in this case that, after the first attempts of the bailiff, the applicant has had to wait, before repossessing the flats, for approximately ten years in the first proceedings, seven years in the second one, eleven years in the third and in the fifth one, eight years in the fourth one.

45. Consequently, there has been a violation of Article 1 of Protocol No. 1 and of Article 6 § 1 of the Convention regarding all five sets of proceeding.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant sought reparation for the pecuniary damage it had sustained. In particular, it proposed two means of calculation. The first one concerned what the applicant called “fiscal damage”. The applicant submitted that it had bought the flats in order to locate there its official seat. That would have permitted the applicant to qualify the flats as necessary to the exercise of its activities, to accordingly reduce its taxable income and to

obtain a deduction of all the expenses related to the flats from the payment of the taxes. Nevertheless, the flats being occupied by the tenants, they had to be qualified as “civil” and no tax deductions could be obtained. The applicant submitted the following amounts as example of damage: 92,426,294 Italian lire (ITL) [47.734,20 euros (EUR)] for the year 1996, ITL 106,925,186 [EUR 55.222,25] for the year 1997, ITL 93,918,269 [EUR 48.504,74] for the year 1998.

The second means of calculation proposed by the applicant concerned the loss of rent. It gave some figures as example for the year 1996.

Finally, the applicant left the matter to be assessed by the Court in an equitable manner.

The applicant also sought reimbursement of its legal costs. It claimed a lump sum of ITL 92,006,186 [EUR 47.517,23] for its costs and expenses before the national courts together with costs and expenses before the Court.

48. The Government stressed that the applicant had failed to adduce evidence of any pecuniary damage sustained as a result of the alleged violations and it submitted that in any event the amounts claimed were excessive. Therefore, according to the jurisprudence of the Court, no reimbursement of the “fiscal damage” could be awarded. Besides, the Government stressed the fact that, after the law on rent control, the applicant had let the flats to companies or banks. This would show the contradiction of the applicant's assertion with regard to the effective destination of the flats.

Concerning the loss of rent, the Government contested the periods 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.

49. The Court considers that the applicant must be awarded compensation for the pecuniary damage it had sustained.

As regards the claim for the “fiscal damage”, the Court considers that the applicant failed to adduce any evidence of the damage sustained. Therefore the Court rejects the applicant's claim.

On the other hand, 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 30,000.

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). In particular, the

Court considers that only the costs relating to the delay in the eviction must be reimbursed and, accordingly, decides to award the applicant the sum of EUR 5,000 under this head.

50. The Court awards a total sum of EUR 35,000 for the pecuniary damage.

### **B. Costs and expenses**

51. The applicant sought reimbursement of its costs and expenses before the Court (see *supra* § 47).

52. 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, § 22, 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.

### **C. Default interest**

53. 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* unanimously that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* unanimously 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) 35,000 EUR (thirty-five thousand euros) for pecuniary damage;
  - (ii) 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* unanimously 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