CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF PANNOCCHIA v. ITALY

(Application no. 37008/97)

JUDGMENT

STRASBOURG

17 April 2003

FINAL

17/07/2003

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 Pannocchia 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,
Mr E. LEVITS,
Mr A. KOVLER, *judges*,
Mrs M. DEL TUFO, ad hoc *judge*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 27 March 2003,

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

PROCEDURE

1. The case originated in an application (no. 37008/97) 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 an Italian national, Mr Roberto Pannocchia ("the applicant"), on 28 February 1997.

2. The applicant was represented by Mrs L. Pannocchia, a lawyer practising in Livorno. The Italian Government ("the Government") were represented by their Agent, Mr U. Leanza, and by their successive co-agents, Mr V Esposito and Mr F. Crisafulli.

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. The Government appointed Mrs M. del Tufo 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 1925 and lives in Livorno.

9. The applicant is the owner of a flat in Livorno, which he had let to A.R.

10. In a writ served on the tenant on 16 September 1991, the applicant communicated his intention to terminate the lease and summoned the tenant to appear before the Livorno Magistrate.

11. By a decision of 19 October 1991, which was made enforceable on 17 March 1993, the Livorno Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 14 October 1992.

12. On 23 March 1993, the applicant served notice on the tenant requiring him to vacate the premises.

13. On 6 May 1993, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 8 June 1993.

14. Between 8 June 1993 and 26 June 2000, the bailiff made ten 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. In the meantime, on 27 January 1994, the applicant made a statutory declaration that he urgently required the premises as accommodation for his daughter

17. Pursuant to Section 6 of Law no. 431/1998, the enforcement proceedings were suspended.

18. At the beginning of 2002 the tenant vacated the flat.

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 ARTICLE 6 § 1 OF THE CONVENTION

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

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 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).

23. 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 approximately eight years and seven months after the first attempt of the bailiff repossessing the flat.

24. 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

25. 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

26. The applicant sought reparation for the pecuniary damage he had sustained, which he put at 54,000,000 Italian Lire (ITL) [27,888.67 euros (EUR)], for the loss of rent for the period from October 1982, under the legislation relaxing restrictions on rent levels; 200,000,000 ITL [103,291.38 EUR] for the unavailability of the flat; 20,000,000 ITL [10,329.14 EUR] for renovation works and 5,347,361 ITL [2,761.68 EUR] for the costs of executing the possession order.

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

28. The Court considers that the applicant must be awarded compensation for the pecuniary damage.

As regards the costs for the unavailability of the flat, the Court considers that there is no causal link between the violations found and the alleged pecuniary damage and dismisses the claim.

As regards the costs for renovation works, the Court notes that the applicant is entitled to recover them from the tenant and, therefore, dismisses the claim.

As regards the loss of rent, the Court having regard to the means of calculation proposed by the applicant, in the light of the evidence before it and the period concerned, decides to award on an equitable basis EUR 8,000.

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). Accordingly, it decides to award on an equitable basis EUR 2,000.

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

B. Non-pecuniary damage

29. The applicant claimed ITL 12,000,000 [EUR 6,197.48] for non-pecuniary damage.

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

31. 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 finds that the amount requested is reasonable and decides to award EUR 6,197.48 under this head.

C. Costs and expenses

32. The applicant sought reimbursement for his costs and expenses before the Court, which he put at ITL 10,950,000 [5,655.20 EUR].

33. 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 2,000 is a reasonable sum and awards the applicant that amount.

D. Default interest

34. 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) 6,197.48 EUR (six thousand one hundred ninety seven euros and forty-eight cents) 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 17 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Christos ROZAKIS
Deputy Registrar	President