CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF TASSINARI v. ITALY

(Application no. 47758/99)

JUDGMENT

STRASBOURG

16 October 2003

FINAL

16/01/2004

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 Tassinari v. Italy,

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

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 25 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 47758/99) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mrs Laura Tassinari ("the applicant"), on 16 April 1999.

2. The applicant was represented by Mr E. Senigaglia, a lawyer practising in Rome. 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. On 31 January 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1960 and lives in Rome.

5. She is the owner of a flat in Rome, which she had let to A.D'A.P.

6. In a registered letter of 29 July 1982, the applicant informed the tenant that she intended to terminate the lease on expiry of the term on 31 December 1983 and asked her to vacate the premises by that date.

7. In a writ served on the tenant on 7 October 1985, the applicant reiterated her intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

8. By a decision of 12 December 1985, which was made enforceable on the same day, the Rome Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 June 1986.

9. On 31 October 1986 and 3 November 1986 the applicant served notices on the tenant requiring her to vacate the premises.

10. On 25 November 1986 she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 15 January 1987.

11. Between 15 January 1987 and 12 November 1992 the bailiff made forty attempts to recover possession. Each attempt proved unsuccessful, as, under the statutory provisions providing for the suspension, the applicant was not entitled to police assistance in enforcing the order for possession.

12. On 15 October 1987, the applicant instituted civil proceedings against the Ministry of the Interior and the prefect in order to obtain reimbursement of the damages resulted from the refusal or delay to grant her police assistance. The proceedings was declared inadmissible.

13. In May 1989, Mr S.S. reiterated his proposition made in 1987, to rent the flat at a price of 1,100,000 Italian lire (ITL) [568.10 euros (EUR)] for the first year and ITL 1,200,000 [EUR 619.75] for the second year.

14. On 6 April 1994 the applicant served another notice on the tenant requiring her to vacate the premises.

15. On 11 May 1994 she served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 3 June 1994.

16. Between 3 June 1994 and 23 October 1998 the bailiff made twenty attempts to recover possession. Each attempt proved unsuccessful, as, under the statutory provisions providing for the suspension, the applicant was not entitled to police assistance in enforcing the order for possession.

17. On 17 August 1998, the tenant died.

18. On 3 November 1998, the applicant recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

19. Since 1947 the public authorities in Italy have frequently intervened in residential tenancy legislation with the aim of controlling rents. This has been achieved by rent freezes (occasionally relaxed when the Government decreed statutory increases), by the statutory extension of all current leases and by the postponement, suspension or staggering of the enforcement of orders for possession. The relevant domestic law concerning the extension of tenancies, the suspension of enforcement and the staggering of evictions is described in the Court's judgment in the case of *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 18-35, ECHR 1999-V.

A. The system of control of the rents

20. As regards the control of the rents, the evolution of the Italian legislation may be summarised as follows.

21. The first relevant measure was the Law no. 392 of 27 July 1978 which provided machinery for "fair rents" (the so-called *equo canone*) on the basis of a number of criteria such as the surface of the flat and its costs of realisation.

22. The second step of the Italian authorities dated August 1992. It was taken in the view of progressive liberalisation of the market of tenancies. Accordingly, a legislation relaxing on rent levels restrictions (the so-called *patti in deroga*) entered into force. Owners and tenants were in principle given the opportunity to derogate from the rent imposed by law and to agree on a different price.

23. Lastly, Law no. 431 of 9 December 1998 reformed the tenancies and liberalised the rents.

B. Obligations of the tenant in the case of late restitution

24. The tenant is under a general obligation to refund the owner any damages caused in the case of late restitution of the flat. In this regard, Article 1591 of the Italian Civil Code provides:

> "The tenant who fails to vacate the immovable property is under an obligation to pay the owner the agreed amount until the date when he leaves, together with other remaining damages".

25. However, Law no. 61 of 1989 set out, *inter alia*, a limit to the compensation claimable by the owner entitling him to a sum equal to the rent paid by the tenant at the time of the expiration of the lease, proportionally increased according to the cost of living (Article 24 of Law n. 392 of 27 July 1978) plus 20%, along the period of inability to dispose of the possession of the flat.

26. In the judgment no. 482 of 2000, the Constitutional Court was called upon to decide whether such a limitation complied with the Constitution. The Constitutional Court held that it was compatible with the Constitution with regard to periods of time during which the suspension of the evictions was determined by law. The Constitutional Court explained that the introduction of that limitation was intended to settle the tenancies of the time of the emergency legislation, when the housing shortage made the suspension of the enforcement necessary. While evictions were suspended *ex lege*, the law predetermined the *quantum* of the reimbursement chargeable to the tenant, both measures being temporary and exceptional. Besides, the interests of the owner were counterbalanced by the exemption for him from the burden to prove the damages.

27. The Constitutional Court declared the limitation to the compensation claimable by the owner unconstitutional with regard to cases where the impossibility for the owner to repossess the flat depended on the conduct of the tenant and was not due to a legislative intervention. Accordingly, it opened the way to owners for the institution of civil proceedings in order to obtain full reparation of the damages caused by the tenant.

THE LAW

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

28. The applicant complained of her prolonged inability to recover possession of her flat, owing to the lack of police assistance. She alleged a violation of her right of property, as guaranteed by 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."

29. 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..."

30. The Court has previously examined a number of cases raising issues similar to those 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, §§ 46-75; *Lunari v. Italy,* no. 21463/93, 11 January 2001, §§ 34-46; *Palumbo v. Italy*, no. 15919/89, 30 November 2000, §§ 33-48).

31. 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 instance. It notes that the applicant had to wait approximately eleven years and ten months after the first attempt of the bailiff before being able to repossess 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

32. 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

33. The applicant sought reparation for the pecuniary damage she had sustained, which she calculated as follows:

- EUR 11,785.75, the sum being the loss of rent for the period from 1 June 1987 to 30 May 1989, on the basis of a new lease that she could have stipulated with Mr S.S.;
- EUR 37,734.36, the sum being the difference between the market value rent and the rent imposed by law for the period from August 1992 to October 1998;
- EUR 39,767.18, for the depreciation of the value of the flat as a consequence of the conduct of the tenant;

The applicant stressed that the flat in issue is located in the city centre.

34. The Government contested those claims.

35. As regards the first claim for the loss of rent [EUR 11,785.75], the Court must reject it because a loss of rent can only exist after August 1992.

As regards the second claim for the loss of rent [EUR 37,734.36], the Court notes that the applicant submitted the above-mentioned amounts on the basis of the difference between the market value rent - as estimated in accordance with the rent proposed by Mr S.S. (EUR 568.10 for the first year of rent and EUR 619.75 for the second year) - and the rent imposed by law (EUR 16,229.19). The applicant also submitted an expert opinion (real estate agent) who estimates the value of the flat in 2001 between ITL 363,000,000 [EUR 187,473.85] and ITL 440,000,000 [EUR 227,241.04]. Having regard to the means of calculation proposed by the applicant and in the light of the evidence before it and the period concerned, the Court decides to award her on an equitable basis EUR 29,600.

As regards the claim for reimbursement for the depreciation of the flat, the Court recalls that the applicant is entitled to recover all the costs and expenses she had sustained directly from the tenant. Consequently, the claim is dismissed.

36. The Court awards a total sum of EUR 29,600 for pecuniary damage and rejects any other claim.

B. Non-pecuniary damage

37. The applicant claimed EUR 26.855,76 for the non-pecuniary damage.

38. The Government contested the claim.

39. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 3,000 under this head.

C. Costs and expenses

40. The applicant also claimed reimbursement of her legal costs and expenses as follows:

- EUR 1,296.49 for the costs of the enforcement proceedings;
- EUR 2,065.83 for the costs and the expenses of the proceedings that the applicant instituted against the Ministry of the Interior and the prefect in order to obtain reimbursement of the damages resulted from the refusal or delay to grant her police assistance. The applicant recalls that his action was declared inadmissible, the delay in granting her police assistance being in accordance with law.
- EUR 7,456.78 for the costs and expenses of the eviction proceedings;

The applicant also sought reimbursement of her costs and expenses before the Court. She left the matter to the Court's discretion.

41. The Government contested the claims.

42. On the basis of the information in its possession and the Court's case-law, the Court considers it reasonable to award the applicant the sum of EUR 1,296.49 for the costs of the enforcement proceedings and EUR 2,000 for the costs and expenses before the Court.

As regards the costs and expenses incurred in the proceedings against the Ministry of the Interior and the prefect, the Court recalls that an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred (see, for example, *Bottazzi v. Italy* [GC], no. 34884/97, ECHR 1999-V, § 30). In the present case, the delay in granting the applicant police assistance was in accordance with law. The Court considers, therefore, that the institution of the proceedings in issue was not necessary and rejects the claim.

As regards the eviction proceedings, the Court considers that the costs and expenses of the proceedings on the merits are not related to the violations found. Accordingly, it rejects the claim.

43. The Court awards a total sum of EUR 3,296.49 for legal costs and expenses.

D. Default interest

44. 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) EUR 29,600 (twenty-nine thousand six hundred euros) for pecuniary damage;
      (ii) EUR 3,000 (three thousand euros) for non-pecuniary damage;
      (iii) EUR 3,296.49 (three thousand two hundred ninety-six euros and forty-nine cents) for legal costs and expenses;
      (iv) any tax that may be chargeable on the above amounts;
   (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 16 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President