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

FIRST SECTION

CASE OF DELFINO SAVIO v. ITALY

(Application no. 59537/00)

JUDGMENT

STRASBOURG

16 October 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 Delfino 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,
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. 59537/00) 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, Mr Delfino Savio ("the applicant"), on 22 July 2000.

2. The applicant was represented by Mrs M.S. Del Vecchio, a lawyer practising in Turin. 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 7 March 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1911 and lives in Chieri.

5. He is the owner of a flat in Turin, which he had let to C.V.

6. In a writ served on the tenant on 5 May 1986, the applicant informed the tenant of his intention to terminate the lease and summoned the tenant to appear before the Turin Magistrate.

7. By a decision of 4 June 1986, which was made enforceable on the same day, the Turin Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 4 June 1987.

8. On 16 January 1991, the applicant served notice on the tenant requiring him to vacate the premises.

9. On 25 February 1991, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 27 March 1991.

10. On 27 March 1991, the bailiff made one attempt to recover possession, which proved unsuccessful, as, the applicant was not entitled to police assistance in enforcing the order for possession.

11. On 11 May 1992, the applicant served notice on the tenant requiring him to vacate the premises.

12. On 1 June 1992, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 8 July 1992.

13. Between 8 July 1992 and 16 October 1998, the bailiff made twelve attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

14. Pursuant to Section 6 of Law no. 431/98, the enforcement proceedings were suspended.

15. On 24 January 2000, the applicant recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

16. 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

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

18. 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.

19. 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.

20. 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

21. 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."

22. 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 no. 392 of 27 July 1978) plus 20%, along the period of inability to dispose of the possession of the flat.

23. 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.

24. 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

25. The applicant complained of his prolonged inability to recover possession of his flat, owing to the lack of police assistance. He alleged a violation of his 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."

26. 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..."

27. 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, §§ 34-46, 11 January 2001; *Palumbo v. Italy*, no. 15919/89, §§ 33-48, 30 November 2000).

28. 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 seven years and six 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

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 claimed 10,587.36 euros (EUR) for the pecuniary damage, the sum being the loss of rent for the period from August 1992 to January 2000.

The applicant submitted this amount as the result of the difference between the market value rent and the rent imposed by law. The applicant maintained that the market value rents were higher than the rents imposed by law in the measure of at least 50%.

31. The Government contested the claim.

32. Since the applicant has failed to submit itemised particulars of his claim, together with the relevant supporting documents or vouchers, as required under Rule 60 of the Rules of Court, the Court decides to make no award under this head.

B. Non-pecuniary damage

33. The applicant claimed EUR 26,000 for the non-pecuniary damage.

34. The Government contested the claim.

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

C. Costs and expenses

36. The applicant also claimed reimbursement of his legal costs and expenses as follows:

- EUR 2,918.46 for the costs of the enforcement proceedings;
- EUR 4,117.91 for the costs and expenses before the Court.

37. As regards the costs of the enforcement proceedings, the Government contested the claim. As regards the costs and expenses before the Court, the Government did not make any submissions.

38. 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 1,500 for the costs and expenses incurred in the domestic proceedings and EUR 2,000 for the proceedings before the Court.

39. The Court awards a total sum of EUR 3,500 for legal costs and expenses.

D. Default interest

40. 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 3,000 (three thousand euros) for non-pecuniary damage;
      (ii) EUR 3,500 (three thousand five hundred euros) for legal costs and expenses;
      (iii) 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