CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

**CASE OF CUCINOTTA v. ITALY**

*(Application no. 63938/00)*

JUDGMENT

STRASBOURG

30 October 2003

**FINAL**

*30/01/2004*

*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 Cucinotta v. Italy,**

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 9 October 2003,

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

# PROCEDURE

1. The case originated in an application (no. 63938/00) 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 two Italian nationals, Mr Rosario Cucinotta and Mr Giovanni Cucinotta ("the applicants"), on 24 October 2000.

2. 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 27 June 2002 the Court declared the application admissible.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were respectively born in 1951 and 1952 and live in Messina.

5. They are the owners of a flat in Milan, which they had let to F.G.

6. In a registered letter of 29 April 1993, the applicants informed the tenant that they intended to terminate the lease on expiry of the term on 30 December 1993 and asked him to vacate the premises by that date.

7. The tenant told the applicants that he would not leave the premises.

8. In a writ served on the tenant on 30 June 1993, the applicants reiterated their intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

9. By a decision of 28 October 1993, which was made enforceable on 8 November 1993, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 31 January 1996.

10. On 6 February 1996, the applicants served notice on the tenant requiring him to vacate the premises.

11. On an unspecified date, they served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 15 March 1996.

12. Between 15 March 1996 and 21 September 2001, the bailiff made eleven attempts to recover possession. Each attempt proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

13. On 29 January 2002 and on 16 April 2002, the bailiff made two attempts to recover possession which proved unsuccessful, as the applicants were not entitled to police assistance in enforcing the order for possession.

14. In July 2002, the applicants recovered possession of the flat.

## II. RELEVANT DOMESTIC LAW

15. 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

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

17. 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.

18. 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.

19. 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

20. 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.”

21. 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.

22. 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.

23. 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

24. The applicants complained of their prolonged inability to recover possession of their flat, owing to the lack of police assistance. They alleged a violation of their 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."

25. The applicants 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 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).

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 instance. It notes that the applicants had to wait approximately six years and three 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

28. 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

29. The applicants claimed 67,189 euros (EUR) for the pecuniary damage. They submitted that this sum represents the amount they would have gained if a sum corresponding to the value of the flat would have been invested in public bonds. For the purpose of assessing the value of the flat, the applicants submitted an expert opinion.

30. The Government contested the claim.

31. The Court finds no causal link between the violations it has found and the alleged pecuniary damage. Therefore it rejects the claim for such damage.

### B. Non-pecuniary damage

32. The applicants claimed EUR 25,000 for the non-pecuniary damage. The applicants also left the matter to the Court's discretion.

33. The Government contested the claim.

34. The Court considers that the applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards each of them EUR 3,000 under this head.

### C. Costs and expenses

35. The applicants also claimed reimbursement of their legal costs and expenses as follows:

- EUR 979,59 for the costs of the enforcement proceedings;
- EUR 516,46 for the costs of the expert opinion in order to assess the value of the flat;
- EUR 5,074.49 for the costs and expenses before the Court.

36. The Government contested the claims.

37. As regards the costs of the enforcement proceedings, on the basis of the information in its possession and the Court's case-law, the Court considers it reasonable to award the applicants the sum of EUR 700 (EUR 350 for each applicant).

As regards the costs of the expert opinion in order to assess the value of the flat, 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) and considers that they were not necessary. Accordingly, the Court rejects the claim.

As regards the costs and expenses for the proceedings before it, the Court considers it reasonable to award the applicants, who were not represented by a lawyer, the sum of EUR 500 (EUR 250 for each applicant) under this head.

### 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 each of the applicants, 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 600 (six 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Erik FRIBERGH<br>Registrar | Christos ROZAKIS<br>President |