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

FIRST SECTION

CASE OF ANTONIO SIENA v. ITALY

(Application no. 65120/01)

JUDGMENT

STRASBOURG

11 March 2004

FINAL

11/06/2004

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 Antonio Siena 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 S. NIELSEN, *Section Registrar*,

Having deliberated in private on 19 February 2004,

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

PROCEDURE

1. The case originated in an application (no. 65120/01) 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 Antonio Siena ("the applicant"), on 12 January 2001.

2. The applicant was represented by MM. U. Sebastiano and M. Provvisier, lawyers practising in Naples. The Italian Government ("the Government") were represented by their successive Agents, respectively Mr U. Leanza and Mr I.M. Braguglia, and by their successive co-Agents, respectively Mr V. Esposito and Mr F. Crisafulli.

3. On 10 October 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1931 and lives in Naples.

5. The applicant is the owner of a flat in Naples, which he had let to M. D'A.

6. In a registered letter of 12 April 1984, the applicant informed the tenant that he intended to terminate the lease on expiry of the term and asked her to vacate the premises.

7. In a writ served on the tenant on 28 April 1984, the applicant reiterated his intention to terminate the lease and summoned the tenant to appear before the Naples Magistrate.

8. By a decision of 16 July 1984, which was made enforceable on 17 October 1984, the Naples Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 June 1986.

9. The tenant objected to the Naples Magistrate decision and informed the applicant that she would not leave the premises.

10. On 16 July 1990, the applicant served notice on the tenant requiring her to vacate the premises.

11. On 17 September 1990, he informed the tenant that the order for possession would be enforced by a bailiff on 4 October 1990.

12. Between 4 October 1990 and 25 November 1991, the bailiff made three attempts to recover possession. Each attempt proved unsuccessful, as the applicant was not entitled to police assistance in enforcing the order for possession.

13. On 13 November 1992, the applicant served a second notice on the tenant requiring her to vacate the premises.

14. On 24 December 1992, he informed the tenant that the order for possession would be enforced by a bailiff on 8 January 1993.

15. Between 8 January 1993 and 16 September 1993, the bailiff made two unsuccessful attempts to recover possession.

16. On 16 September 1993 the tenant asked for a suspension of the enforcement proceedings.

17. On 16 July 1996, the applicant served a third notice on the tenant requiring her to vacate the premises.

18. On 2 October 1996, he informed the tenant that the order for possession would be enforced by a bailiff on 10 October 1996.

19. Between 10 October 1996 and 4 December 1998, the bailiff made eight unsuccessful attempts to recover possession.

20. Pursuant to section 6 of Law no. 431/98, the tenant asked for a suspension of the enforcement proceedings. The Naples Court of Appeal decided to suspend it until 15 October 1999.

21. On 9 November 1999, the applicant informed the tenant that the order for possession would be enforced by a bailiff on 19 November 1999.

22. Between 19 November 1999 and 10 March 2000, the bailiff made four unsuccessful attempts to recover possession.

23. On 28 February 2002, the applicant served a fourth notice on the tenant requiring her to vacate the premises.

24. On 17 April 2002, the applicant informed the tenant that the order for possession would be enforced by a bailiff on 6 May 2002.

25. On 2 May 2002, pursuant to section 80 of Law no. 388/00, the tenant asked for a suspension of the enforcement proceedings.

26. On 20 June 2002, the law-decree no. 122 postponed the enforcement of the eviction proceedings until 30 June 2003.

27. According to the last information submitted by the applicant on 12 September 2003, he had not yet recovered possession of the flat.

II. RELEVANT DOMESTIC LAW

28. 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. Lastly, for some cases, a suspension of the enforcement of the orders for possession until 30 June 2004 was introduced by Legislative Decree no. 147 of 24 June 2003, which became Law no. 200 of 1 August 2003.

A. The system of control of the rents

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

30. 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.

31. 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.

32. 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

33. 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."

34. 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.

35. 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.

36. 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

37. 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."

38. 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..."

39. 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).

40. 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 has been waiting at least twelve years and eleven months after the first attempt of the bailiff without 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

41. 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

42. The applicant claimed 41,316.55 euros (EUR) for the pecuniary damage he had sustained in terms of loss of rent.

43. The Government contested the claim.

44. 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

45. The applicant claimed EUR 77,468.53 for the non-pecuniary damage.

46. The Government contested the claim.

47. 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

48. The applicant also claimed EUR 9,746.32 for his costs and expenses before the Court. He recalled the case of Lapalorcia versus Italy in which the Court awarded the applicant the sum of 15,582,686 Italian lire (ITL) [EUR 8,047.79] for legal costs and expenses before the Commission and ITL 4,000,000 [EUR 2,065.83] for legal costs and expenses before the Court.

49. The Government contested the claim.

50. The Court observes that the present case is different from the one which the applicant refers to. Accordingly, on the basis of the information in its possession and the Court's case-law, the Court considers it reasonable to award him the sum of EUR 2,000 for the proceedings before it.

D. Default interest

51. 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 2,000 (two thousand 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 11 March 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President