CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF D'OTTAVI v. ITALY

(Application no. 33113/96)

JUDGMENT

STRASBOURG

17 July 2003

FINAL

17/10/2003

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 D'ottavi 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,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr E. LEVITS, *judges*,
Mr G. RAIMONDI, ad hoc *judge*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 26 June 2003,

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

PROCEDURE

1. The case originated in an application (no. 33113/96) 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 Luca D'Ottavi ("the applicant"), on 23 September 1996.

2. The applicant is represented by Mr Sebastiano Russo, a lawyer practising in Rome. The Italian Government ("the Government") were represented by their Agent, Mr U. Leanza and by their co-Agent, Mr V. Esposito. Mr V. Zagrebelsky, the judge elected in respect of Italy, withdrew from sitting in the case (Rule 28). The Government appointed Mr G. Raimondi as *ad hoc* judge to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 2).

3. On 22 March 2001 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1967 and lives in Cave.

5. F.D. was the owner of a flat in Rome, which he had let to A.C.

6. In a writ served on the tenant on 20 October 1987, he communicated his intention to terminate the lease and summoned the tenant to appear before the Rome Magistrate.

7. By a judgment of 30 April 1990, the text of which was deposited with the registry on 3 May 1990, the Rome Magistrate declared termination of the lease and ordered that the premises be vacated by 30 November 1990. The judgment was made enforceable on 24 September 1990.

8. On 17 January 1991, F.D. served notice on the tenant requiring her to vacate the premises. On 28 February 1991, he served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 15 April 1991.

9. Between 15 April 1991 and 27 May 1993, the bailiff made 13 attempts to recover possession. Each attempt proved unsuccessful, as, under the statutory provisions providing for the staggering of evictions, F.D. was not entitled to police assistance in enforcing the order for possession.

10. On an unspecified date the applicant became the owner of the flat.

11. On 28 February 1994, he served notice on the tenant requiring her to vacate the premises.

12. On 3 May 1994, he served notice on the tenant informing her that the order for possession would be enforced by a bailiff on 10 May 1994.

13. Between 10 May 1994 and 1 December 1998, the bailiff made 24 attempts to recover possession. Each attempt proved unsuccessful, as, under the statutory provisions providing for the staggering of evictions, the applicant was not entitled to police assistance in enforcing the order for possession.

14. Pursuant to Section 6 of Law no. 431 of 9 December 1998, the enforcement proceedings were suspended.

15. On 30 November 2001, 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 n. 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, §§ 46-66; *Lunari v. Italy,* no. 21463/93, 11 January 2001, §§ 34-46; *Palumbo v. Italy*, no. 15919/89, 30 November 2000, §§ 33-47).

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 is waiting since approximately ten years and seven 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. Damages

30. The applicant sought reparation for the pecuniary and non-pecuniary damages he had sustained, which he put at 1,000,000,000 Italian lire [516,456.90 euros (EUR)].

31. The Government contested those claims.

32. As far as the applicant's claim concerns the pecuniary damage, the Court considers that he 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.

Consequently, the Court decides to make no award under this head.

As regards the non-pecuniary damage, 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.

B. Costs and expenses

33. The applicant sought reimbursement of the costs of the enforcement proceedings.

34. The Government contested the claim.

35. 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 2,000 under this head.

C. Default interest

36. 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) 3,000 EUR (three thousand euros) for non-pecuniary damage;
      (ii) 2,000 EUR (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 17 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN Deputy Registrar	Christos ROZAKIS President